रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 47] नई दिल्ली, नवम्बर 17—नवम्बर 23, 2013, शनिवार/कार्तिक 26—अग्रहायण 2, 1935
No. 47] NEW DELHI, NOVEMBER 17—NOVEMBER 23, 2013, SATURDAY/KARTIKA 26—AGRAHAYANA 2, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 14 नवम्बर, 2013

का.आ. 2374.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्द्वारा, श्री संजय कल्लापुर को अधिसूचना की तिथि से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, भारतीय जीवन बीमा निगम के निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के रूप में नियुक्त करती है ।

[फा. सं. ए-15011/06/2012-बीमा-I]
प्रिया कुमार, निदेशक (बीमा)

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 14th November, 2013

S.O. 2374.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Sh. Sanjay Kallapur as part-time non-official Director on the Board of the Life Insurance Corporation of India for a period of three years from the date of Notification or until further orders, whichever is earlier.

[F. No. A-15011/06/2012-Ins. I]

PRIYA KUMAR, Director (Insurance)

नई दिल्ली, 18 नवम्बर, 2013

का.आ. 2375.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्द्वारा उक्त अधिनियम के उद्देश्य के लिए नीचे दी गई तालिका के कॉलम 2 में उल्लिखित अधिकारियों को संपदा अधिकारी नियुक्त करती है और आगे यह निदेश देती है कि उक्त अधिकारी नीचे दी गई तालिका के कॉलम 3 में यथा निर्दिष्ट क्षेत्रों के अंतर्गत आने वाले सरकारी परिसरों के संबंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा या इसके तहत संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग करेंगे तथा सौंपे गए कर्तव्यों का पालन करेंगे ।

क्र. सं.	अधिकारी का पदनाम	सरकारी परिसरों की श्रेणी तथा अधिकार की स्थानीय सीमा
1	2	3
1.	महा प्रबंधक, परिसर, सुरक्षा तथा प्रापण विभाग (डीपीएसपी),राष्ट्रीय कृषि एवं ग्रामीण विकास बैंक, प्रधान कार्यालय, भूतल, 'ए' विंग, सी-24, 'जी' ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुम्बई-400051, महाराष्ट्र	महाराष्ट्र राज्य में मुंबई, ठाणे जिले में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
2.	उप महा प्रबंधक, नाबार्ड, नाबार्ड कॉम्प्लेक्स, कामराज मार्ग (वीआईपी मार्ग), जंगलीघाट (पी.ओ.), पोर्ट ब्लेयर-744103-अंडमान एवं निकोबार	अंडमान और निकोबार संघ राज्य क्षेत्र में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
3.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, आरटीसी, एक्स रोड, मुशीराबाद, हैदराबाद -500020, आंध्र प्रदेश	आंध्र प्रदेश राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
4.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, बैंक तिनाली वीआईपी रोड, पोस्ट बॉक्स नं. 133, ईटानगर-791111, अरूणाचल प्रदेश	अरूणाचल प्रदेश राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
5.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, पोस्ट बॉक्स नं. 1, असम सचिवालय के सामने, जीएस रोड, दिसपुर, गुवाहाटी-781001, असम	असम राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
6.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, मौर्या लोक कॉम्प्लेक्स ब्लॉक बी 4 और 5वां तल, डाक बंगला रोड, पोस्ट बॉक्स नं. 178, पटना-800001, बिहार	बिहार राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
7.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, प्रथम तल, पिथालिया कॉम्प्लेक्स, फाफाडीह चौक, ट्रंक एक्सचेंज के सामने, के के रोड, रायपुर-492009, छत्तीसगढ़	छत्तीसगढ़ राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
8.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, निजारी भवन, मेनेजस ब्रेगेंजा रोड, पणजी-403001, गोवा	गोवा राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
9.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, टावर, नगरपालिका गार्डन के सामने, पोस्ट बॉक्स नं. 8, उस्मानपुरा, अहमदाबाद-380013, गुजरात	गुजरात राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
10.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, प्लॉट सं. 3, सेक्टर 34-ए, पोस्ट बॉक्स नं. 7, चंडीगढ़ -160022, हरियाणा	हरियाण राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर

1	2	3
11.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, ब्लॉक नं. 32, एसडीए वाणिज्यिक परिसर, देव नगर, कसुमपति, शिमला–171009, हिमाचल प्रदेश	हिमाचल प्रदेश राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
12.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, बी–11, चौथा तल, साउथ ब्लॉक, बहु प्लाजा, पोस्ट बॉक्स नं. 2, जम्मू–180012, जम्मू एवं कश्मीर	जम्मू एवं कश्मीर राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
13.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, आदिवासी महाविद्यालय छात्रावास के सामने, करमतोली रोड रांची–834001, झारखंड	झारखंड राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
14.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, नाबार्ड टावर 46, कैम्पे गोडा रोड, बंगलौर–560009, कर्नाटक	कर्नाटक राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
15.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, पोस्ट बॉक्स नं. 5613, पुणेन रोड, स्टेच्यू तिरूवनंतपुरम–695039, केरल	केरल राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
16.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, ई–5, एरेरा कॉलोनी, बिट्टन मार्केट डाक घर, रविशंकर नगर, पोस्ट बॉक्स नं. 513, भोपाल–462016, मध्य प्रदेश	मध्य प्रदेश राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
17.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, 54, वेल्स्ले रोड, शिवाजी नगर, पोस्ट बॉक्स नं. 5, पुणे–411005, महाराष्ट्र	मुंबई और थाने के अलावा महाराष्ट्र राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
18.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, लीरेन मैंशन, दूसरा तल, लैम्फेल सुपर मार्केट के सामने लैम्फेलपत, इम्फाल–795004,मणिपुर	मणिपुर राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
19.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, यू फीएट खर्मीहपेन भवन, द्वितीय एवं तृतीय तल, प्लॉट नं. 28 (2), धानखेती, लॉ कॉलेज के पास, शिलाँग–793003, मेघालय	मेघालय राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
20.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, राम्हलुन रोड (उत्तर) बांगकॉन, आइजोल–796012, मिजोरम	मिजोरम राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
21.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, चौथा तल, पश्चिमी विंग, प्रशासनिक एनएससीबी बिल्डिंग, खेर महल, सर्कुलर रोड, दीमापुर–797112, नागालैंड	नागालैंड राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
22.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, 24, राजेन्द्र प्लेस, नई दिल्ली–110008, नई दिल्ली	दिल्ली राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
23.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, अंकुर 2/1, नयापल्ली सिविक सेंटर, पोस्ट बॉक्स नं. 179, भुवनेश्वर–751015, ओडिशा	ओडिशा राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
24.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, प्लॉट नं. 3, सेक्टर 34–ए, पोस्ट बॉक्स नं. 7, चंडीगढ़–160022, पंजाब	पंजाब राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर

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25.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, 3, नेहरू प्लेस, टोंक रोड, पोस्ट बॉक्स नं. 104, जयपुर-302015, राजस्थान	राजस्थान राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
26.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, ओम निवास चर्च रोड, पोस्ट बॉक्स नं. 46, गंगटोक-737101, सिक्किम	सिक्किम राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
27.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, 48, महात्मा गांधी रोड, पोस्ट बॉक्स नं. 6074, नुनगम्बक्कम चेन्नई-600034, तमिलनाडु	तमिलनाडु राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
28.	उप महा प्रबंधक, (डीपीएसपी), नाबार्ड, पैलेस कम्पाउंड (पूर्व), उजीरबारी रोड, पोस्ट बॉक्स नं. 9, अगरतला-799001, त्रिपुरा	त्रिपुरा राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
29.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, 11, विपिन खंड गोमती नगर, लखनऊ-226010, उत्तर प्रदेश	उत्तर प्रदेश राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
30.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, होटल सनराइज बिल्डिंग 113/2, राजपुर रोड, देहरादून-248001, उत्तराखंड	उत्तराखंड राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर
31.	महा प्रबंधक, (डीपीएसपी), नाबार्ड, अभिलाषा, द्वितीय तल, 6, रॉयड स्ट्रीट, पोस्ट बॉक्स नं. 9083, कोलकाता-700016, पश्चिम बंगाल	पश्चिम बंगाल राज्य में नाबार्ड के स्वामित्व वाले परिसर या नाबार्ड द्वारा या नाबार्ड की ओर से पट्टे पर लिए गए परिसर

[फा. सं. 4/1/2013-बीओए]

एम. एम. दौला, अवर सचिव

New Delhi, the 18th November, 2013

S.O. 2375.—In exercise of the powers conferred by Section 3 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the Officer mentioned in column No. 2 of the table below to be Estate Officer for the purpose of the said Act and further direct that the said officer shall exercise the powers conferred and the duties imposed on a Estate Officer by or under the said Act within the local limits of his jurisdiction in respect of the public premises falling under area as specified in column No. 3 of the table below:

Sl. No.	Designation of the Officer	Categories of Public Premises and Local Limits of Jurisdiction
1	2	3
1.	The General Manager, Department of Premises, Security & Procurement (DPSP) National Bank for Agriculture and Rural Development, Head Office Ground Floor, 'A' Wingh C-24, 'G' Block Bandra Kurla Complex Bandra (East) Mumbai- 400 051, Maharashtra	Premises belonging to or taken on lease by or on behalf of NABARD in Mumbai, Thane district in the State of Maharashtra
2.	The Deputy General Manager, (DPSP), NABARD NABARD Complex, Kamaraj Road (VIP Road), Junglighat (P.O.), Port Blair- 744 103- Andaman and Nicobar	Premises belonging to or taken on lease by or on behalf of NABARD in UT of Andaman and Nicobar

1	2	3
3.	The General Manager, (DPSP) NABARD, R.T.C. X Road Musheerabad Hyderabad-500 020, Andhra Pradesh	Premises belonging to or taken on leases by or on behalf of NABARD in State of Andhra Pradesh
4.	The Deputy General Manager, (DPSP) NABARD, Bank Tinali VIP Road Post Box No. 133, Itanagar -791 111, Arunachal Pradesh	Premises belonging to or taken on lease by or on behalf of NABARD in State of Arunachal Pradesh
5.	The General Manager, (DPSP) NABARD, P. O.Box No. 1 Opposite Assam Secretariat G S Road, Dispur Guwahati- 781 001, Assam	Premises belonging to or taken on lease by or on behalf of NABARD in the State of Assam
6.	The General Manager, (DPSP) NABARD, Maurya Lok Complex Block B 4 and 5 Floors Dak Bunglow- Road Post Box No. 178 Patna-800001, Bihar	Premises belonging to or taken on lease by or on behalf of NABARD in State of Bihar
7.	The General Manager, (DPSP) NABARD, 1st Floors, Pithalia Complex, Fafadih Chowk, Opp. Trunk Exchange K K Road Raipur- 492009, Chhattisgarh	Premises belonging to or taken on lease by or on behalf of NABARD in State of Chhattisgarh
8.	The Deputy General Manager, (DPSP), NABARD, Nizari Bhavan Menezes Braganza Road Panaji - 403 001, Goa	Premises belonging to or taken on lease by or on behalf of NABARD in State of Goa
9.	The General Manager, (DPSP) NABARD, Tower, Opp. Municipal Garden Post Box No.8 Usmanpura, Ahmedabad - 380 013, Gujarat	Premises belonging to or taken on lease by or on behalf of NABARD in State of Gujarat
10.	The General Manager, (DPSP) NABARD, Plot No. 3, Sector 34-A Post Box No.7 Chandigarh -160 022, Haryana	Premises belonging to or taken on lease by or on behalf of NABARD in State of Haryana
11.	The General Manager, (DPSP) NABARD, Block No. 32 S D A Commercial Complex Dev Nagar, Kasumpati Shimla -171 009, Himachal Pradesh	Premises belonging to or taken on lease by or on behalf of NABARD in State of Himachal Pradesh
12.	The General Manager, (DPSP) NABARD, BII, 4th Floor, South Block Bahu Plaza Post Box No. 2 Jammu - 180012, Jammu & Kashmir	Premises belonging to or taken on lease by or on behalf of NABARD in State of Jammu & Kashmir
13.	The General Manager, (DPSP) NABARD, Opposite Adivasi College Hostel Karamtoli Road, Ranchi - 834001, Jharkhand	Premises belonging to or taken on lease by or on behalf of NABARD in State of Jharkhand
14.	The General Manager, (DPSP) NABARD, NABARD Towers 46, Kempe Gowda Road Bangalore - 560009, Karnataka	Premises belonging to or taken on lease by or on behalf of NABARD in State of Karnataka
15.	The General Manager, (DPSP) NABARD, Post Box No. 5613 Punnen Road, Statue Thiruvananthapuram -695 039, Kerala	Premises belonging to or taken on lease by or on behalf of NABARD in State of Karala
16.	The General Manager, (DPSP) NABARD, E-5 Arera Colony, Bittan Market Post Office Ravishankar Nagar Post Box No. 513 Bhopal - 462016, Madhya Pradesh	Premises belonging to or taken on lease by or on behalf of NABARD in State of Madhya Pradesh
17.	The General Manager, (DPSP) NABARD, 54, Wellesley Road Shivaji Nagar Post Box No. 5 Pune - 411 005, Maharashtra	Premises belonging to or taken on lease by or on behalf of NABARD in State of Maharashtra except Mumbai and Thane.

1	2	3
18.	The Deputy General Manager, (DPSP) NABARD, Leiren Mansion 2nd Floor, Opp Lamphel Super Market Lamphelpat, Imphal -795004- Manipur	Premises belonging to or taken on leases by or on behalf of NABARD in State of Manipur
19.	The Deputy General Manager, (DPSP) NABARD, U Pheit Kharmihpen Building 2nd and 3rd Floor, Plt. No. 28(2), Dhankheti, Near Law College Shillong-793003 - Meghalaya	Premises belonging to or taken on leases by or on behalf of NABARD in State of Meghalaya
20.	The Deputy General Manager, (DPSP) NABARD, Ramhlun Road (North) Bawngkawn Aizawl - 796 012, Mizoram	Premises belonging to or taken on leases by or on behalf of NABARD in State of Mizoram
21.	The Deputy General Manager, (DPSP) NABARD, 4th Floor, West Wing Administrative NSCB Building Kher Mahal, Circular Road Dimapur-797 112, Nagaland	Premises belonging to or taken on leases by or on behalf of NABARD in State of Nagaland
22.	The General Manager, (DPSP) NABARD, 24, Rajendar Place New Delhi -110 008, New Delhi	Premises belonging to or taken on leases by or on behalf of NABARD in State of New Delhi
23.	The General Manager, (DPSP) NABARD, Ankur 2/1, Nayapalli Civic Centre Post Box 179 Bhubaneswar-751 015 - Odisha	Premises belonging to or taken on leases by or on behalf of NABARD in State of Odisha
24.	The General Manager, (DPSP) NABARD, Plot. No. 3 Sector 34-A Post Box No. 7 Chandigarh - 160 022- Punjab	Premises belonging to or taken on leases by or on behalf of NABARD in State of Punjab
25.	The General Manager, (DPSP) NABARD, 3, Nehru Place, Tonk Road Post Box No. 104 Jaipur - 302 015- Rajasthan	Premises belonging to or taken on leases by or on behalf of NABARD in State of Rajasthan
26.	The Deputy General Manager, (DPSP) NABARD, Om Niwas Church Road Post Box No. 46 Gangtok - 737 101 Sikkim	Premises belonging to or taken on leases by or on behalf of NABARD in State of Sikkim
27.	The General Manager, (DPSP) NABARD, 48, Mahatma Gandhi Road Post Box No. 6074 Nungambakkam, Chennai - 600 034 Tamil Nadu	Premises belonging to or taken on leases by or on behalf of NABARD in State of Tamil Nadu
28.	The Deputy General Manager, (DPSP) NABARD, Palace Compound (East) Uzirbari Road Post Box No. 9 Agartala - 799001- Tripura	Premises belonging to or taken on leases by or on behalf of NABARD in State of Tripura
29.	The General Manager, (DPSP) NABARD, 11, Vipin Khand Gomti Nagar, Lucknow - 226 010 Uttar Pradesh	Premises belonging to or taken on leases by or on behalf of NABARD in State of Uttar Pradesh
30.	The General Manager, (DPSP) NABARD, Hotel Sunrise Building 113/2, Rajpur Road Dehradun - 248 001 Uttarakhand	Premises belonging to or taken on leases by or on behalf of NABARD in State of Uttarakhand
31.	The General Manager, (DPSP) NABARD, Abhilasha, 2nd Floor, 6, Royd Street Post Box No. 9083 Kolkata -700 016 West Bengal	Premises belonging to or taken on leases by or on behalf of NABARD in State of West Bengal

[F. No. 4/1/2013-BOA]
M. M. DAWLA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 14 नवम्बर, 2013

का.आ. 2376.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में उक्त अधिनियम के अधीन कर्नाटक राज्य के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाईनों के लिये सक्षम अधिकारी के कार्यों का निर्वहन करने के लिये श्रीमती एम. के. देशपांडे, तहसीलदार, कर्नाटक सरकार, को दिनांक 23-9-2013 से प्राधिकृत करती है ।

[फा. सं. एल-14014/29/13-जी.पी.]

एस. पी. अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th November, 2013

S.O. 2376.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authorizes Smt. M. K. Deshpande, Tehsildar, Government of Karnataka to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within the territory of Karnataka w.e.f. 23-09-2013.

[F. No. L-14014/ 29/13-G. P.]

S. P. AGARWAL, Under Secy.

नई दिल्ली, 14 नवम्बर, 2013

का.आ. 2377.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में उक्त अधिनियम के अधीन राजस्थान राज्य के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाईनों के लिये सक्षम अधिकारी के कार्यों का निर्वहन करने के लिये श्रीमती प्रतिभा पारीक, भूमि अवाप्ति अधिकारी, राजस्थान सरकार, को दिनांक 12-9-2013 से प्राधिकृत करती है । पहले प्राधिकृत सक्षम प्राधिकारी श्री जनक सिंह को निरस्त किया जाता है ।

[फा. सं. एल-14014/31/13-जी.पी.]

एस. पी. अग्रवाल, अवर सचिव

New Delhi, the 14th November, 2013

S.O. 2377.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authorizes Smt. Pratibha Pareek, Land Acquisition Officer, Government of Rajasthan to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within the territory of Rajasthan w.e.f 12-09-2013. Earlier notified Competent Authority Shri Janak Singh stands de-notified.

[F. No. L-14014/31/13-G. P.]

S. P. AGARWAL, Under Secy.

कोयला मंत्रालय

आदेश

नई दिल्ली, 14 नवम्बर, 2013

का.आ. 2378.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 378 तारीख 11 फरवरी, 2013 जो भारत के राजपत्र के भाग-II, खण्ड-3, उप-खण्ड (ii) तारीख 16 फरवरी, 2013 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में या उस पर के सभी अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है)उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आतर्यातिक रूप से केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, डाकघर संख्या 60, जिला-बिलासपुर –495006 (छत्तीसगढ़) (जिसे इसमें इसके पश्चात् उक्त 'सरकारी कंपनी' कहा गया है) ऐसे निबंधनों और शर्तों को जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए तैयार है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित भूमि और उस पर के अधिकार तारीख 16 फरवरी, 2013 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :–

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी ;

2. शर्त (1) के अधीन, सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे उक्त अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में जोकि अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय

सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

4. सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि को या उसमें निहित अधिकारों को और किसी अन्य व्यक्ति के अधिकारों को अंतरित करने की शक्ति नहीं होगी ; और

5. सरकारी कंपनी, ऐसे निदेशों या शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित की जाएं ।

[फा. सं. 43015/21/2010-पीआरआईडब्ल्यू-I]

वी. एस. राणा, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 14th November, 2013

S.O. 2378.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 378 dated the 11th February, 2013, in the Gazette of India, Part II, Section 3, sub-section (ii), dated the 16th February, 2013, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and the rights in or over the land described in the schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act.

And, whereas the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, Post Box No. 60, District-Bilaspur-495006 (Chhattisgarh) (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the said land and the rights in or over the said land so vested shall with effect from dated the 16th February, 2013 instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions, namely :-

(1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act ;

(2) a Tribunal shall be constituted under Section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1), and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights in or over the said land, so vested shall also be borne by the Government company;

(3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said land so vested;

(4) the Government company shall have no power to transfer the said and the rights in or over the said land so vested, to any other person without the prior approval of the Central Government; and

(5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F. No. 43015/21/2010 - PRIW-I]

V. S. RANA, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 24 अक्तूबर, 2013

का.आ. 2379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 07/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-10-2013 को प्राप्त हुआ था ।

[सं. एल-12012/68/2007-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th October, 2013

S.O. 2379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of The State Bank of Mysore, and their workman, which was received by the Central Government on 24-10-2013.

[No. L-12012/68/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 17th October 2013

PRESENT : Shri S. N. NAVALGUND, Presiding Officer

C R No. 07/2009

I Party

Sh. B Giridhar.
No.45/24-K-15-11,
Ameena.Abbas Nagar, Near
Venkata Ramana Colony,
KURNOOL.

II Party

The Deputy General
Manager, Zonal Office.
Hubli Zone, Sri Siddappa
Kambli Rd., Old Lamington
Rd., HUBLI - 580 021.

Appearances :

I Party : Muralidhara
Advocate

II Party : Shri Ramesh Upadhayay
Advocate

AWARD

1. The Central Government vide order No. L-12012/68/2007-IR(B-I) dated 10.02.2009 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

> ''Whether the action of the management of State Bank of Mysore, Hubli in imposing punishment of removal from service to Shri B. Giridhar S/o B. Krishnamurthy vide order dated 21-01-2006, is legal and justified? If not, to what relief the concerned workman is entitled?''

2. On receipt of the reference while registering it in C R 07/2009 when notices were issued to both the sides they entered their appearance through their respective advocates and I party filed his claim statement on 26.05.2010 and II party its counter statement on 30. 7.2010. On completion of the pleadings having regard to certain as sertions made in the claim statement touching the fairness of the Domestic Enquiry while raising a Preliminary Issue as to

> ''Whether the Domestic Enquiry held against the I party by the II Party is fair and proper?''

after receiving the evidence of both the sides by order dated 25. 10.2011 the said issue was answered in the affirmative holding that Domestic Enquiry held against the I Party by the II party is fair and proper. After order on the Preliminary Issue the I Party was called upon to adduce evidence on victimization and being not gainfully employed. Learned advocate appearing for the I party while filing the affidavit of I Party on 13.02.2012 while examining him on oath as WW 1 (V) got exhibited the certified copy of the Order passed by the Hon'ble High Court of Karnataka in Criminal Appeal No. 26 27/2010 dated 23.01.2012 wherein he has been acquitted of the charges levelled against him setting aside the judgement passed in Spl . Case No. 86/2005 on the file of Special Judge, Bellary as Ex W-1 but the learned counsel for the II Party rest contended by cross - examining him without leading any rebuttal evidence.

3. Since the Domestic Enquiry conducted by the II Party against the I party is held as fair and proper, having regard to the arguments put forward on merits by the learned advocates appearing on both the sides, I have to decide whether the finding of the Enquiry Officer charge being proved is perverse and, if not the punishment imposed is isproportionate to the misconduct proved and whether in view of the judgement of the Hon'ble High Court of Karnataka in C A No. 2627/2010 acquitting the I Party setting aside the judgement of the Special Judge Bellary in C C No. 86/2005 the order of removal from serice is required to be set aside, the points that arises for my consideration are:

> Point No. 1: Whether the finding of the Enquiry Officer is perverse?
>
> Point No. 2: If not, whether the punishment of removal imposed is disproportionate to the proved misconduct against the I party?
>
> Point No. 3: whether in view of his acquittal from all the alleged offences by the Special Judge and Hon'ble High Court in respect of which the Domestic Enquiry was conducted the order of removal is liable to be set aside or needs any modification?
>
> Point No. 4: What Order?

4. On appreciation of the pleadings, the evidence adduced in the Domestic Enquiry, on victimization, finding of the Enquiry Officer with the arguments put forward by the learned advocates my finding on the above points are as under:

> Point No. 1: Partly Affirmative and partly Negative
>
> Point No. 2: Affirmative
>
> Point No. 3: Negative
>
> Point No. 4: As per final order

REASONS

5. **Point No. 1 and 3 :** It is borne out from the records that on a complaint given by Assistant Manager, State Bank of Mysore, ADB Sandur Branch district Bellary to the Assistant General manager, Region IV, Region Bellary the copy of which is marked in the Domestic Enquiry as BEX 2(b) alleging that on 16.11.2004 as a Joint Custodian and Offlciating Branch Manager himself and B Giridhar/ I Party who was incharqe Head Cashier went to the strong room for closure of case and as Mr. B Giridhar had initialled denomination wise in, the vault register had not initialled the cash balance and when he asked to initial the cash balance he refused saying in Hindi "Hum nahi Karte hai. Peechevala kya Kiya Nahi mujhe maloom nahi, My Nahi Karta, Tum Jaise Jatilog bahutse Deke hai, Tumko Kya Karna Hai Kario" and when he told him "Ye Tumhara ghar nahi. It is office. Behave properly" he fisted on his face due to which bleeding started and his lower tooth injured and in the meanwhile his colleague Chandrashekar intervened and stopped further assault and there after Sh. Aravind Kumar another colleague came to the branch to whom he explained the matter, the Assistant General Manager and Disciplinary Authority, State Bank of Mysore Region-IV, Bellary issued a charge sheet to the I party calling upon him to give his reply within seven days which reads as under:

> ''On 16-11-04, when you were officiating as Head Cashier, you are alleged to have committed the following misconduct.
>
> On 16-11-04 at about 6.30 P.M. while closing cash, you were advised by the joint custodian & the Branch Manager (Offg) to initial the Cash Balance in the vault register, as erivisaged in Chapter-9 of Bank's Book of instructions. You instead of complying with his instructions not only defied him but also told him. to do whatever he wanted. When the joint custodian & the Branch Manager (Offg) advised you to behave yourself, you hit him with your fist on his face, causing the joint custodian serious injury.
>
> Your above act amounts to Gross Misconduct in terms of Para 5 c, e & j of Memorandum of Settlement dated 10-04-2002 on Disciplinary Authority procedure for workmen vide Staff Circular 56/02-03 dated 22.08.2002.
>
> You are required to submit your reply, if any, within 7 days of receipt of this Charge Sheet, Failing which further action in terms of the extant provisions will be initiated without any Further reference to you."

6. To the above charge sheet when the I Party gave his reply dated 19.02.2005 stating that on 16.11.2004 at 06.30 p.m. while closing Branch Cash he put his initials in the vault register recording the Cash Balance as also envisaged in the Bank Books of Instructions and that he never told Sh. S K Kadam to do whatever he wants and that the only defended at that moment and requested to drop the further proceedings. The Assistant General Manager and Disciplinary Authority, SBM, Region-IV being not satisfied of the reply ordered for holding Disciplinary Enquiry appointing Sh. Ramachandran, Zonal Manager as Enquiry Officer and Sh. Bhaskarcharvarty, Deputy Manager, JVSL Branch as Presenting Officer. Then the Enquiry Officer scheduled the enquiry on 07.04.2005 and as requested by the I Party/CSE adjourned to 15.04.2005 and even on 15.04.2005 since CSE did not appear he postponed it to 20.04.2005 and later CSE telephoned and requested the Enquiry Officer to postpone the enquiry on the ground that he has some religious function from 19.04.2005 to 21.04.2005, it was adjourned to 27.04.2005 and again on his request he adjourned from 27.04.2005 to 09.05.2005, from 09.05.2005 to 27.06.2005 and even on that day CSE did not appear but had sent a telegram seeking time stating that "NOT FEELING WELL POSTPONE ENQUIRY DATE". On that date i.e., 27.06.2005 on serious opposition by the Presenting Officer to postpone the enquiry the Enquiry Officer taking into account the previous history/conduct on the part of the CSE observing that he has been purposely protracting the enquiry placing him exparte proceeded to receive the evidence of M G Pillay, Branch Manager, Subhash Krishna Kadam, Assistant Manager, Chandrashekar Shetti, Assistant Manager (Advances) as BW 1 to BW 3 kept present by the Presenting Officer and in the evidence of BW 1 exhibited the Key Register; Attendance register to show that on the date of alleged incident i.e. 16.11.2004 the CSE was on duty and vault register of ADB Sandur Branch as BR 1, BR 2 and BR 3 and in the evidence of BW 2 the letter addressed by him to the Assistant General Manager, Region IV, Bellary on 17.11.2004 regarding the alleged incident occurred on 16.11.2004; the letter handing over charge to him by the Branch Manager, Sh. Pillai on 16.11.2004; two medical certificates issued by Medical Superintendent, Sandur Govt. Hospital and Dr. (Gayathri, Sandur Govt. Hospital pertaining to him dated 16.11.2004 and 17.11.2004; the letter of apology given by CSE to him (BW 2) dated 16.11.2004; sanction order regarding reimbursement of Medical Bill pertaining to him as Exhibits BEx 2(a), BEx 2(b), BEx 3(a), BEx 3(b), BEx 4 and BEx 5 respectively after giving three days time to the PO to file his written brief he submitted the Enquiry Finding on 02.07.2005 Charge Being Proved. Then the Disciplinary Authority while giving a show cause notice along with the copy of the Enquiry Report after receiving his reply and affording him an opportunity of personal hearing by his order dated 21.01.2006 inflicted the punishment of Removal from the Service with Superannuation benefits i.e Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and without disqualification from future employment by invoking provisions of Clause 6(b) of Memorandum of Settlement dated 10.04.2002. Being

aggrieved by the said punishment Order when the CSE/I Party preferred an appeal to the Deputy General Manager and Appellate Authority he after affording an opportunity of hearing by his order dated 26.06.2006 confirmed the order passed by the Disciplinary Authority. Being aggrieved by the said punishment when I Party approached the Assistant Labour. Commissioner (C), Bellary for conciliation and he submitted FOC on 30.04.2007 it resulted in this reference. Since as adverted to by me in detail which is also discussed in detail while considering the Preliminary Issue touching the fairness of the enquiry, the Enquiry Officer after affording several opportunities to the CSE/I Party and being satisfied that he was unnecessarily protracting the enquiry placing him exparte on the same day receiving the evidence tendered for the management closed the enquiry and submitted his enquiry finding and as there was no challenge to the evidence adduced for the management the Enquiry Officer observing that the oral evidence and documentary evidence placed before him corroborative with one another arrived at conclusion of holding that Charge as proved beyond doubt. It is on record that in respect of this very incident alleged to have occurred on 16.11.2004 persuant to the complaint filed by BW 2 Subhas Kadam on the same day the Deputy Superintendent of Police, Hospet had charge sheeted the CSE for offences punishable under Sections 504, 323 of IPC and Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1959 in the court of Special Judge, Bellary and the same registered in Special Case No. 86/2005 after trial by Judgement dated 22.03.2010 the CSE/Accused therein was acquitted of alleged offence punishable under Section 3(1)(X) of Scheduled Caste and Schedule Tribes (Prevention of atrocities) Act 1959 and having found guilty U/S 504 and 323 of IPC convicted him to pay a fine of Rs. 4000.00 in all. Aggrieved by the said judgement when the CSE preferred an appeal to the Hon'ble High Court of Karnataka in C A No. 2627/2010 the Hon'ble High Court of Karnataka through judgement dated 23.01.2012 observing that the alleged incident was a stray incident of some exchange of words between the complainant and the accused which resulted in slight harm to the complainant which could not be complained by him and there was a delay of one day in filing the complaint which appears to be an afterthought to malign the accused and the age of injury was not mentioned in the wound certificate so as to ascertain when the injury was suffered by the complainant ordered for acquittal of the CSE from the offences punishable U/S 504 and 323 of the IPC setting aside the judgement of Special Judge, Bellary. The learned advocate appearing for the I Party while citing the decision of Hon'ble Supreme Court of India in the case of Tank G M vs. State of Gujarat and others reported in 2006 III LLJ Page 1075 urged that in view of acquittal of the accused from all the alleged offences on the complaint filed by this very complainant the enquiry finding and consequent punishment imposed are liable to be set aside. Since in the said reported decision relating to amassing wealth by a public servant the Supreme Court came to the conclusion that was a case of no evidence and arrived at conclusion on subsequent order of acquittal of the accused the order of dismissal was liable set aside, but in the present case i.e. not the situation. Though the charge in the criminal case as well as in the Domestic Enquiry were one and the same the acquittal in the present case is not a acquittal for no evidence as already adverted to by me above. Moreover, the standard of proof of a criminal charge and the charge in the Domestic Enquiry cannot be equated because in the criminal case the charge is required to be proved beyond reasonable doubt whereas in the Domestic Enquiry it is the probability that weighs in coming to certain conclusion. In the instant case since the CSE/I Party by his own conduct allowed the Enquiry Officer to proceed in his absence placing him exparte there was no challenge to the evidence of the management placed before the Enquiry Officer, but inspite of it, it was the duty of the Enquiry Officer to analyse the evidence and apply his mind to the charge and the evidence placed before him whether the entire allegations in the charge were proved because happening of some event was not denied. According to the allegations of the officiating manager of ADB Sandur Branch of the 11 party who was examined as BW 2 in the enquiry, on 16-11-2004 at 06.30 p.m. when himself and the CSE who was incharge Head Cashier of the Branch went to the Strong Room for closure of Cash and as CSE who had initialled the denomination wise entries in the Vault Register and had not initialled the cash balance refused to initial the cash balance when he asked him to initial and uttered to him "Hum nahi Karte hai. Peechevala kya Kiya Nahi mujhe maloom nahi, My Nahi Karta, Tum Jaise Jatilog bahutse Deke hai. Tumko Kya Karna Hai Karlo" and in turn when he told "Ye Tumhara ghar nahi. It is office. Behave properly" he hit him with fist on the face due to which bleeding started and his lower teeth got injured and to this effect he gave evidence before the Enquiry Officer without much variation. But it is pertinent to note that according to him on the very date of incident he had went to the Medical Officer, Community Health Centre, Sandur and the said Medical Officer after examining him gave a certificate copy of which is produced at BEx 3(a) wherein the injuries noticed by him are described as (1) contusion - 4 cm x 3 cm Rt. Thigh anteriorily near the knee joint (2) Abrasion - 5 cm x 3 ern, outer part of Right Leg before knee joint which suggest that he had contusion and abrasion on the right thigh anteriorly on the right thigh and outer part of the right leg below knee joint which is possible due to blow by hard and blunt object like Stick. Whereas in the another certificate produced by him at BEx (3)(b) purported to have been issued by another Medical Officer of the same Hospital wherein he describes the injury as "Mobile 1+1" and soft tissue laceration on lower lip and gingival ulceration in relation to1+1. According to the allegations in the complaint the alleged assault by the CSE was on his face whereas in the Medical Certificate issued on the very

date of alleged incident no injury on the face finds place and on the other hand according to that certificate the injuries noticed were on the Right thigh and leg near the knee joint. Therefore, the second medical certificate marked as exhibit BEx 3(b) appears to have been issued by another medical officer of the same Government Hospital to suit the allegations in the complaint obliging the complainant. Having regard to these discrepancies in the two medical certificates produced by the complainant/BW 2 the allegation of CSE fisting him on the face after altercation of words in relation to signing of the Cash Balance Register was an improvement to make the incident serious. From this evidence on record the Enquiry Officer ought not to have accepted the portion of the charge he having hit complainant with his fist on his face, therefore, I am of the considered view the Enquiry Officer holding the entire charge being proved beyond doubt is perverse and that he ought to have held the charge being proved in part relating to altercation of words between the two. In the result, I have arrived at conclusion part of the enquiry finding even holding the charge of assaulting by the CSE to the complainant as proved is perverse but I have no reason to say that the altercation ensued as alleged in the charge had not occurred and accordingly, I have arrived at conclusion of answering this point partly in the Affirmative relating to the portion of the charge alleging assault by the CSE to the complainant and Negative in respect of the portion of the charge regarding altercation ensued between the CSE and the complainant due to failure of the CSE to put initial at the cash balance in the Vault Register.

7. **Point No. 2:** The learned advocate appearing for the I Party while submitting that only there was some exchange of words between the I Party and Officiating Branch Manager in the Strong Room for failure of the CSE to initiate the Cash Balance and the same was being made much adding to the said incident that he was insulted by taking his caste and also assaulted on the face the Disciplinary Authority taking into account the evidence on record could have accepted the Enquiry Finding in part and for the trivial incident of exchange of words between them could have warned the CSE or punished by withholding one or two increments as such the punishment imposed of Removal from Service is highly dis-proportionate. Interalia, the learned advocate appearing for the II party urged that the I party having compelled the Enquiry Officer to place him exparte and to receive the evidence of the management and to give his finding charge being proved the same being accepted by the Disciplinary Authority the punishment imposed for such attitude on the part of the CSE against his superior in the Bank is just and proper and in support of his arguments cited the decision of Supreme Court in Employers, Management, Colliery, M/s. Bharat Coking Coal Ltd. Etc., Appellants v. Bihar Colliery Kamgar Union through Workmen, Respondent reported in AIR 2005 SC 2006. Having regard to the facts of that reported case that workmen formed themselves into unlawful assembly armed with deadly weapons assaulted managing staff held the order of Dismissal was proportionate. But in the instant case as adverted to by me in the above Paras and as held by the Hon'ble High Court of Karnataka in the appeal against the judgement of the trial court that a trivial incident of exchange of words was made much falsely making an allegation that complainant was also insulted taking his caste and assaulted on the face from the evidence on record even the Disciplinary Authority could have appreciated and accepted the enquiry finding in part only in respect of exchange of words disbelieving the charge and finding on assault and inflicted a lesser punishment like warning or withholding one or two increments. Having regard to the fact that CSE had omitted to put his initial at Cash Balance in the Vault Register when asked to do so having retorted in a fashion that he can do whatever he can, the punishment of removal for such a trivial incident is too harsh and at the most he could have been admonished or imposed with punishment of withholding of one increment. At this stage even imposing a punishment of withholding of one or two increment would be harsh because till he was acquitted by the Hon'ble High Court of Karnataka even from the offences under Section 504 and 323 of IPC by its judgement dated 23-01-2012 by virtue of the judgement of the Special Judge he was found guilty of these offences and the ordial he has suffered since 2006 the year in which he suffered the punishment of Removal from Service and the circumstances do not entitle him for backwages this is sufficient punishment for him and there is no necessity to impose him any actual punishment. Accordingly, I have arrived at conclusion of answering this issue in the Affirmative and of the opinion that it is not a fit case to impose any punishment other than refusing the backwages.

8. **Point No. 4:** In view of my finding on Point No. 1 to 3 though the Enquiry Finding in part relating to the exchange of words between I Party and the complainant who was the officiating Branch manager in connection with he/CSE not putting his initial at the Cash Balance in the Vault Register he had deserved a minor punishment like Warning or withholding of one increment, but having regard to the ordial he has suffered since 2006 the year in which he is removed from Service it is sufficient punishment for him and that he is entitle for reinstatement in service with continuity of Service and other consequential benefits without backwages. Accordingly, this issue is answered and I pass the following.

ORDER

The Reference is partly allowed holding that the action of the management of State Bank of Mysore, Hubli in imposing punishment of removal from service to Shri B. Giridhar S/o B. Krishnamurthy vide order dated 21-01-2006 is not legal and justified and that he is entitle for Reinstatement into

Service with continuity of Service and other consequential benefits without backwages. The II party shall issue reinstatement order within 30 days from the date of publication of the Award failing which after one month of the publication it is liable to pay him the wages for which he would be entitle to.

(Dictated to U D C transcribed by him, corrected and signed by me on 17th October, 2013)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 315/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/297/2003-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 315/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 30-10-2013.

[No. L-22012/297/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/315/2003 Date: 03-10-2013

Party No.1(a) :

The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No.1(b)

The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai - 400020.

Versus

Party No. 2 :

The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 3rd October, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Premlal Narayan Dhurve, for adjudication, as per letter No. L-22012/297/2003-IR (CM-II) dated 08.12.2003, with the following schedule:-

> ''Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Premlal Narayan Dhurve, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?''

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Premlal Narayan Dhurve (''the workman'' in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.06.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and

unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleaded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.06.1992 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon 'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the

Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that he cannot say the contents of the statement of claim as the same is in English language and in his statement of claim and so also in his affidavit, he has mentioned that his initial engagement in FCI on 01.06.1992 was through a contractor and after every two years the FCI was changing the contractor. The workman has further admitted that he himself and other Security Guards had filed a W.P. No. 1389/1999 before the Hon'ble High Court, Nagpur Bench and in that Writ Petition, they had taken the plea that he himself and other Security Guards were engaged in FCI through contractors and though time and again, different contractors were appointed, but the Security Guards remained the same. The workman has further admitted that letter issued by ''Industrial Security and Fire Services, Bombay'' to Asstt. Manager, FCI, Gondia dated 17.12.1996 bears his signature, which was given by him showing his willingness to work as a Contract Security Guard at FCI, Gondia Branch and Exhibit M-I is the copy of the said letter. The workman has also admitted in his cross-examination that as the contractor did not pay him wages from May, 1993 to 04.08.1993, he had made a complaint before the ALC, Nagpur and the intervention of the ALC, FCl paid him a sum of Rs. 1,834 towards his wages and he signed the receipt, Exhibit M-II and he has not filed any appointment order issued by the FCI or any document to show that wages were paid to him directly by the FCI and he also cannot say if he has not filed any document to show that he had completed 240 days of work in the preceding 12 calendar months of the date of his alleged termination and as per the direction of the contractor, he himself and other Security Guards started working in FCI at Gondia and he cannot say the name of the said contractor.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit.

It is necessary to mention here that as none appeared on behalf of the workman on 01.08.2013, to which date the case was fixed for cross-examination of the witness for the management, to cross-examine the witness, the evidence of the witness for the management remained unchallenged and on 01.08.2013, order was passed to proceed exparte against the workman.

7. At the time of argument, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.I was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held

that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon 'ble High Court operates as res- judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of Section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> ''In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer; the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and that as per the direction of the contractor he himself and other Security Guards started working in FCI, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of Section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor

and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the Central Board or the State Board, as the case may be, prohibit by notification in Official Gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the State Government or an authority which can be held to be state within the' meaning of Article 12 of the Constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:-

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association Vs. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh Vs. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath Vs. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, undersection 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer: Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be

established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

11. In the decision reported in 1985-II LLOJ-4 (supra) the Hon 'ble Apex Court have held that :-

''Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer· and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... ''. 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a ' workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477) . Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without, something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union,"

12. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that :-

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature, The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment, Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S, 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for

work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications,

Air India's case 1997 AIR SCW430 Overruled prospectively, M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 [Bom] and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman"does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U- 23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non- joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 310/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/292/2003-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 310/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 30-10-2013.

[No. L-22012/292/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/310/2003

Date: 03-10-2013

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai - 400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar,
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 03rd October, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Bhaiyya Ganpat Dhanvij for adjudication, as per letter No. L-22012/292/2003-IR (CM-II) dated 08-12-2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Bhaiyya Ganpat Dhanvij, Security Guard w.e.f. 14-03-1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Bhaiyya Ganpat Dhanvij ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 27-01-1989 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14-03-1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1989, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular

employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01-11-1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleaded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 27-01-1989 to 14-03-1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no. 1 is that the appropriate Government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01-11-1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite

number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that he cannot say the contents of the statement of claim as the same is in English language and in his statement of claim and so also in his affidavit, he has mentioned that his initial engagement in FCI on 27.01.1989 was through a contractor and after every two years the FCl was changing the contractor. The workman has further admitted that he himself and other Security Guards had filed a W.P. No. 1389/1999 before the Hon'ble High Court, Nagpur Bench and in that Writ Petition, they had taken the plea that he himself and other Security Guards were engaged in FCI through contractors and though time and again, different contractors were appointed, but the Security Guards remained the same. The workman has further admitted that letter issued by "Industrial Security and Fire Services, Bombay" to Asstt. Manager, FCI, Gondia dated 17-12-1996 bears his signature, which was given by him showing his willingness to work as a Contract Security Guard at FCI, Gondia Branch and Exhibit M-I is the copy of the said letter. The workman has also admitted in his cross-examination that as the contractor did not pay him wages from May, 1993 to 04-08-1993, he had made a complaint before the ALC, Nagpur and the intervention of the ALC, FCI paid him a sum of Rs. 1,901 towards his wages and he signed the receipt, Exhibit M-II and he has not filed any appointment order issued by the FCI or any document to show that wages were paid to him directly by the FCI and he also cannot say if he has not filed any document to show that he had completed 240 days of work in the preceding 12 calendar months of the date of his alleged termination and as per the direction of the contractor, he himself and other Security Guards started working in FCI at Gondia and he cannot say the name of the said contractor.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the party no. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit.

It is necessary to mention here that as none appeared on behalf of the workman on 01-08-2013, to which date the case was fixed for cross-examination of the witness for the management, to cross-examine the witness, the evidence of the witness for the management remained unchallenged and on 01-08-2013, order was passed to proceed exparte against the workman.

7. At the time of argument, it was submitted by the learned advocate for the party no. 1 that the workman was never appointed by party no. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party no. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party no. 1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the party no. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party no.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party no.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res- judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party no.1 that the party no. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party no. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party no.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of

section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the party no.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

8. First of all, I will take up the submission made by the learned advocate for the party no.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29-07-2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party no. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1989, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party no. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14-03-1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01-11-1990 to abolish the contract labour system in FCl and directed to give employment to contract labours engaged by the management and party no. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and that as per the direction of the contractor he himself and other Security Guards started working in FCI, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 1985-II LJJ-4 (S.C.) (The workman of the Food Corporation of India Vs. M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:-

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.
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> 4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same

from the bill of the contractor. The Act also conceives that all appropriate Government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows :—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

11. In the decision reported in 1985-11 LLOJ-4 (supra) the Hon 'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LW - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union.''

12. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that :—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section l0(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
>
> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.
>
> Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal) : C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal) : W.A. Nos. 345-354 of 1997m D/ -

17-4-1998 (Kant) : W.P. No. 4050 of 1999, D/- 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/- 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-230l3/11/89/LW, dated 28-05-92, Government of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has' not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 2S-F or 2S-H of the Act.

14. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non- joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman.

Hence, it is ordered :—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 69/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/15/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October , 2013

S.O. 2382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 69/2005) of the Central Government Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of M/s. Singareni Collieries Company Limited, and their workmen, received by the Central Government on 30-10-2013.

[No. L- 22012/15/2005-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI Presiding Officer

Dated the 13th day of August, 2013

INDUSTRIAL DISPUTE No. 69/2005

Between:

The Vice- resident
(Sri S. Satyanarayana)
Singareni Collieries Employees Union (CITU)
H.No. NIG-1, APHB Colony,
Bellampalli - 505251. ....Petitioner/Union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.
Sreerampur Division,
Sreerampur-504303 ....Respondent

Appearances :

For the Petitioner : M/s. A.K. Jayaprakash Rao, K. Srinivas Rao, P. Sudha, T. Bal Reddy, M. Govind, K. Ajay Kumar & Venkatesh Dixit, Advocates

For the Respondent: M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a dispute referred by the Government of India, Ministry of Labour and Employment, under reference L-22012/15/2005-IR (CM-II) dated 8-l1-2005 for adjudicating upon the dispute under Sec. 10(1)(d) of the Industrial Disputes Act, 1947 between the Management of M/s. Singareni Collieries Company Ltd., and the workman Sri B. Sarangapani represented by Singareni Collieries Employees Union. The terms of reference are as under:

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Division in reducing 4 increments with cumulative effect and transfer of Sh. B. Sarangapani, Clerk-I, RK- New Tech/Sreerampur Divn. is legal and justified? If not, to what relief the workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 69/2005 and Notices have been issued to both the workman and the management and they both appeared before the court and engaged their respective counsels with the consent of the other party and with the leave of the court.

2. For Petitioner filed his claim statement with the averments in brief as follows :

Petitioner union has espoused the cause of its member who is also the Branch Secretary of the Petitioner union and the Government of India was pleased to refer the dispute for adjudication. The workman concerned joined the service as clerk on 23-8-1989 and put in clean record of service. He was promoted as Special Gr. Clerk from 1-1-2004. While so a charge sheet dated 16/18-4-2001 was issued to the workman alleging misconduct for which he submitted his explanation denying the allegations levelled against him. Not being satisfied with the same a departmental enquiry was ordered appointing Mr. V. R. Gopala Rao as Presenting Officer, the Presenting Officer himself gave evidence as witness on behalf of the respondent. Which is contrary to law. Enquiry officer permitted the Presenting Officer to give such evidence. On behalf of the Management 6 witnesses were examined and on behalf of the workman two witnesses were examined and the workman has also given his statement. There is no legal evidence on record to substantiate the charges levelled against the workman. Presenting Officer also admitted in his evidence that the concerned workmam was issued with the charge sheet as he has carried out his action in the name of CITU union. It is only an act of victimization-and unfair labour practice. Management could not elicit anything to substantiate the charges levelled against the workman concerned from the two witnesses who were examined for the workman. But the enquiry officer submitted a report holding the workman guilty of the charges. The findings of the enquiry officer are perverse, one sided and based on mere assumptions and presumptions. He gave his findings that the charges levelled against the workman under Standing Orders 25.11 was not proved whereas the charge under Standing Orders 25.16 was proved. But no charge under Standing Orders 25.l6 was levelled against the workman. Thus, the enquiry officer exceeded his jurisdiction in holding the workman guilty under Standing Orders 25.l6. He brushed aside the legal evidence on record and erroneously held that the workman has been guilty of the charge under the said Standing Order. Thus, his finding is perverse and material irregularity apart from victimizing the workman. Respondent accepted the said findings mechanically and passed the impugned order reducing four increments with cumulative effect. The same is illegal, unjust and contrary to law and also a measure of victimization and unfair labour practice. The workman never instigated any employee to go strike. The strike is on going strike and the recognized union and the representative union gave the strike call and

moreover, the government did not declare the said strike as illegal. Only to curb the Petitioner's union the action has been taken against the workman illegally. The procedure adopted by the Management is illegal, unjust, contrary to law and in violation of principles of natural justice. The punishment inflicted is uncalled for unjustified and disproportionate and discriminating. No action has been taken against the recognized union and representative union who gave the strike call. But the workman has been victimized for this trade union activity since he belongs to CITU which is unjust and illegal. Therefore, the impugned order dated 17-4-2003 is to be set aside granting all consequential reliefs in the interest of justice and fair play.

3. Respondent has filed his counter with the averments in brief as follows :

Petitioner union never attained the recognized status in company level and representative status In area level in the trade union elections held in the respondent company. There are grievance committees constituted at the various levels to redress the grievances of the workmen working in the respondent company. If there is any dispute the said grievance committee is to resolve the same, failing which the procedure contemplated under the Industrial Disputes Act, 1947 should follows. The workman has been transferred from SRP II Incline to RKNT with effect from 15-10-2002 and subsequently to Bhupalpalli area with effect from 27.6.2003. While working at SRP 2 incline he was issued with charge sheet dated 16.4 .2001 under company's Standing Orders 25.11. and 25.21. which reads that :

"25.11 : Going on illegal strike either singly or with other workmen without giving 14 days previous notice.

25.24 : Sabotage or causing willful damage to work in progress or to property of the company. "

The said charges were leveled for instigating Badlies and Coal Fillers of SRP 2A incline causing illegal strike on 16-4-2001 in 1st shift and loss of production of 153 tonnes per shift. The workman has submitted his explanation as it was not satisfactory enquiry was ordered appointing the enquiry officer and Presenting Officer. The enquiry was conducted and both the Presenting Officer and the workman and two witnesses on his behalf have adduced their respective evidence. The contention of the Petitioner that Presenting Officer himself has given evidence as witness on behalf of the respondent which is contrary to law and that enquiry officer has permitted the same is denied. The Petitioner is put to strict proof of the same. In the enquiry, Presenting Officer presenting the case is not contrary to law and there is no wrong on the part of the enquiry officer to permit the same. The workman has fully participated in the enquiry and he was given full opportunity to defend himself. As there is sufficient evidence on record to substantiate the charges, the enquiry officer has given findings, finding the workman as guilty of the charges. There is no act of victimization and unfair labour practice on the part of the Management in issuing charge sheet. .The workman has instigated the Badlies and Coal Fillers of Srirampur 2A Incline to resort to an illegal strike from 16-4-2001 in first shift causing a loss of production of 153 tonnes per shift which is a serious misconduct. The Disciplinary Authority has given due opportunity to the workman to make his representation regarding the enquiry findings and the workman has availed the same. Since there was no ground made out warranting re-enquiry the request made by the workman for a fresh enquiry has been declined. The contention that findings of the enquiry officer are perverse, one sided and based on mere presumptions and as sumptions is incorrect. The Disciplinary Authority examined the entire file and the past history of the workman and passed the order of penalty of reversion to a lower stage by reducing four increments with cumulative effect from 1-4-2003. The same is not contrary to law and it is not an act of victimization. The punishment is in accordance with the law and it is not at all disproportionate nor discriminatory. The action of the Management is on the basis of the proved charges which are on the basis of evidence on record. The averments of the workman that a recognized union and representative union instigated strike, no action was taken on the part of the Management against them but victimized the workman as workman belongs to CITU and therefore the action of the Management is illegal, unjust, contrary to law, victimization and unfair labour practice are all incorrect. The claim is to be dismissed.

4. This Tribunal heard either party regarding the validity of domestic enquiry and by virtue of the order dated 30-8-2010 held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11 A of the Industrial Disputes Act, 1947.

6. The points that arise for determination are :

1. Whether the action of the General Manager, of M/s. Singareni Collieries Company Limited, Sreerampur Division in reducing 4 increments with cumulative effect and transfer of Sh. B. Sarangapani, Clerk-I, RK-New Tech/ Sreerampur Divn. is legal and justified?

2. To what relief the workman is entitled to?

7. Point No.(1) :

The workman has faced the following charges during the departmental enquiry:

"25.11 : Going on illegal strike either singly or with other workmen without giving 14 days previous notice.

25.24 : Sabotage or causing willful damage to work in progress or to property of the company. "

After conducting the departmental enquiry the enquiry officer has submitted his report whereunder he has drawn the conclusion that, "under the circumstances, it is concluded that Sri B. Sarangapani, Clerk, SRP. 2 incline, SRP(P) Area incited/instigated the workmen on 16-4-2001 at SRP. 2A incline and on other days at SRP. l incline and SRP. 2 Incline to go on strike in sympathy with the Badli-fillers and his action resulted in strike, which amounts to misconduct under company's Standing Order No. 25.16 and 25.24 are proved beyond doubt.

8. Thus, it is very much clear that the enquiry officer traveled beyond the scope of the charges 1eve1ed against the workman. This can be said so since, no charge under Standing Orders 25.16 has been levelled against the workman. Further, the enquiry officer failed to answer the first charge levelled against the workman i.e., the charge under 25.l1. Further, it can safely be held that there is violation of principles of natural justice in this case, since there was no opportunity for the workman to understand, explain, and defend himself regarding the allegations and findings on the charge under Standing Orders 25.l6. For these reasons alone the enquiry findings are ought to have been disregarded by the Disciplinary Authority.

9. As can be seen from the material on record, the strike was going on since 9-4-2001 in the given area. It was not for the first time the strike was commenced on 16-4-2001. Further the evidence on record shows that several unions participated and supported the strike. Petitioner workman has been an office bearer of the Petitioner union. Thus, if any activity has been done by him in furtherance of the strike, the same ought to have been attributed to the union but not to him individually. From the evidence on record one can reasonably gather that several representatives of the Petitioner union have had discussions with the workers of the Respondent in connection with the strike and the witnesses have spoken to the effect that the workman herein has been one such persons. Therefore, the action regarding the charges in this case ought to have been taken against the Petitioner union but not the workman individually.

10. There is no clear finding regarding the aspect been declared as illegal or otherwise. Petitioner has categorically contended in his claim statement that government never declared the strike as illegal. For this there is no answer, on the part of the respondent.

11. The evidence on record discloses that there has been on going strike in several other areas of the M/s. Singareni Collieries Company Limited for a general cause of the badli fillers who refused to carry extra explosive cannisters to underground and against the directions given to them by the Management to carry on such work, the said strike has been held. In such case, holding the workman as responsible for such strike, describing him as instigator of the said strike can not be accepted as a correct version.

12. Leaving alone all these aspects, even if it is taken that the evidence on record discloses that Petitioner together with some others has spoken to the workman to sympathize with badli fillers who are on strike since some time prior to 16-4-2001 imposing the punishment of reversion to lower post, stoppage of four increments with cumulative effect and also transferring him to some other place is certainly a most disproportionate punishment imposed, against the workman.

13. When all the above aspects of the case above discussed are considered, one can read between the lines and note that this is clear act of victimization of the Petitioner to curb the activities of the workers unions with iron hand and Impose the will of the Management on the workers. It is certainly an unfair labour practice which shall never be permitted.

14. To conclude, considering the fact that the enquiry officer traveled beyond the scope of the charges while giving his findings and report and further the Disciplinary Authority has wrongly accepted such report and further awarded punishment which is grossly disproportionate to the misconduct alleged that too not properly established, for the reasons discussed above, the impugned orders of the General Manager, M/s. Singareni Collieries Company Limited, Sreerampur Division educing 4 increments with cumulative effect and transferring Sri B. Sarangapani, Clerk-I, RK-New Tech, the workman are to be declared as illegal and unjust and they are to be set aside.

This point is answered accordingly.

15. Point No. 2 : In view of the finding given in Point No.l, the impugned orders of, the General Manager M/s. Singareni Collieries Company Limited, Srirampur division transferring Sri B. Sarangapani, Clerk-I, RK-New Tech, dated 17-4-2003, reverting him to lower scale of pay by reducing 4 increments with cumulative effect, are to be set aside. Consequently, the workman shall be restored to his original place of work and scale of pay as on the date of said proceeding and further monetary benefits to which he is entitled to, in the absence of the impugned order. He is entitled for all arrears of the pay accrued to him consequent to this order.

This point is answered accordingly.

Result :

16. In the result, the impugned proceedings on reference No. CRP/PER/IR/91/798 dt.17-4-2003 of General Manager of M/s. Singareni Collieries Company Limited Sreerampur Division, reverting the workman Sri B. Sarangapani, Clerk-I, RK-NT incline, Sreerampur Division to a lower stage in the present scale of pay by reducing 4 increments with cumulative effect is declared as illegal, and unjust and is hereby set aside. Consequently, the pay of Sri B. Sarangapani, Clerk-I, is restored to its original position as it was on the day of the said order and he is entitled. for continual increase in pay as per rules to which he will be entitled in the absence of impugned order and all other attendant benefits. The arrears of pay to which he is entitled to consequential to this order shall be calculated and be paid to the said workman forth with by the respondent. Further, he shall be retransferred to his original place of work as on the date of impugned order.

The reference is answered accordingly.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 13th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स वेस्ट्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 114/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/162/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Dhoptala Sub Area of WCL, and their workman, received by the Central Government on 30-10-2013.

[No. L-22012/162/2002-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/114/2003

Date: 23-09-2013

Party No.1 : The Sub Area Manager,
Dhoptala Sub Area of WCL,
Post-Sasti, Tah- Rajura, Chandrapur

Versus

Party No. 2 : Shri Lomesh Kharad,
General Secretary, Rashtriya Colliery Mazdoor Congress,
Dr. Ambedkar Nagar,
Ballarpur, Post & Tah. Ballarpur,
Distt. Chandrapur.

AWARD

(Dated: 23rd September, 2013)

This is a reference made by the Central Government for adjudication of the industrial dispute between the employers in relation to the management of Dhoptala Sub Area of WCL. and their workman, Shri Bhupeli Rajam through his union, as per letter No.L-22012/162/2002-IR(CM-II) dated 08-05-2003, with the following schedule:-

> "Whether the action of the management in relation to Sasti Colliery of Western Coalfields Ltd. in dismissing the services of Shri Bhupeli Rajam, Loader vide office order No.WCL/SC/45B/121 dated 17-01-1999 is legal and justified? If not, to what relief is the workman entitled?".

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Rashtriya Colliery Mazdoor Congress" filed the statement of claim on behalf of the workman, Shri Bhupeli Rajam ("the workman" in short) and the management of the WCL (here-in-after referred to as the Party No.l) filed its written statement.

The case of the union as projected in the statement of claim is that the workman was appointed as a Trammer-cum-Loader w.e.f.23-3-1971 and he was quite illiterate and the job of loader in underground mines is very hard and hazardous and the work of Trammer is also equally hazardous and doing such hazardous work, the workman suffered from different ailments and old age weakness including mental disorder and neurotic depression, so his family members got him treated by the local doctor, Vijay N. Bongirwar at his clinic at Ballarpur and the workman was under the treatment of the said doctor from 2-12-1995 to 2-12-1996 and the Party No. l submitted a charge sheet dated 8/11-3-1995 against the workman, for remaining absent from duty from 5-12-1994, to which his wife, Smt. Narsubai submitted a reply and without examining the reply properly and knowing fully well that the workman was a mental patient, the Party No. l decided to proceed with the inquiry against the workman and the wife of the workman intimated the Supdt. of Mines, Sasti Colliery vide her letter dated 10-2-1997 about the workman suffering from mental illness since the last two years and not in a position to go to duty or to attend the enquiry and to send him for treatment for mental disorder and the wife of the workman, in response to the letter of the Inquiry Officer, dated 2/8-2-1999, vide her letter dated 10-2-1999, intimated the Inquiry Officer about her husband suffering from mental disease since last two years and not to be in a position to attend duty or the enquiry and requested to send her husband to Mental Hospital, Nagpur for treatment and the said letter was received by the management and the Manager/Supdt. of Mines being satisfied, referred the workman to the Medical Authorities for treatment of his mental disease and the Medical Authority examined the workman and referred him to Dy. Chief Medical Officer, Ballarpur Area and the Dy. Chief Medical Officer examined the workman and being satisfied about the workman suffering from mental disease, referred his case to headquarters of WCL, Nagpur, for sending him for treatment at Government Medical College, Nagpur and after due approval of the Competent Authorities, the workman was sent by the Dy. Chief Medical Officer, WCL, Ballarpur Area for treatment vide letter dated 6-3-1997 to the unit incharge, Deptt. of Phychiatry, Govt. Medical College Hospital and the workman was treated at the Govt. Hospital from 22-3-1997 to 10-6-1997 and a certificate was issued by the doctor of the Govt. Hospital with the report that "the workman is fit to join his duties under supervision" and the workman accordingly reported for duty to the Suptd.of Mines as per his application dated 16-6-1997, but he was not allowed to join his duty and was advised to take further treatment as per letter of Party No. 1 dated 01/10-7-1997 and the Dy. Chief Medical Officer sought clarification vide his letter dated 5-8-1997 from Medical Suptd., Regional Mental Hospital, Nagpur as to whether the workman was fully fit to resume duty or was unfit and the wife of the workman vide letter dated 17-8-1997, in response to the letter of the Inquiry Officer dated 7/12-8-1997 intimated the Inquiry Officer, enclosing documents about the details of the mental disorder of her husband and about the workman not to be in a position to attend the enquiry and to stop the enquiry and she also again submitted letter dated 1-9-1997 addressed to the Inquiry officer, with two documents, explaining the health condition of her husband and also endorsed a copy of the same to the Manager, Sasti Colliery, but Party No. 1 arbitrarily and illegally dismissed the workman vide office order No. 121 dated 16/17-1-1999 with immediate effect and the charge sheet, enquiry proceedings and enquiry report suffer from several serious infirmities and the workman was victimized and there was gross violation of principles of natural justice and the Inquiry Officer acted as a mere evidence recording machine at the hands of the management and in view of mental illness of the workman, the enquiry should have been stopped and as the workman was unfit according to the Supdt. of Mines/Manager, the dependant of the workman should have been given employment in terms of Para 9.4.0 of Chapter IX of N.C.W.A. V and VI and the workman was not allowed to join duty and was kept under illegal and forced idleness without wages and dismissing him from service cannot be said to be justified.

3. In the written statement, the Party No. 1 has pleaded that the workman was appointed on 23-3-71 as Badali Trammer-cum-Loader and subsequently he was regularized as a loader and the service conditions of employees working in the coal industry are governed by the settlements generally known as NCWA and apart from the provisions of NCWA , the provisions of standing orders are also applicable to the workers and in the standing, orders, there is laid down procedure for availing different types of leave, such as sick leave, earned leave and medical leave etc. and the employees are provided with several facilities including medical aid and management has established colliery level dispensary, central hospital etc. for providing medical facilities to their employees and in case of an employee falling sick, he is required to report to the Medical Officer of the company for issue of sick certificate and basing on such certificate, the employee is granted sick leave till he is declared fit for duty by the Medical Officer and serious cases requiring for special treatment are being referred to specialized hospital situated at metropolitan cities and entire expenditure is being borne by the company and the workman was a habitual absentee and he was not interested in his services and though management had given him number of chances to improve his attendance by submission of letter of caution and charge sheets, the workman did not improve his attendance

and as he remained absent from 5-12-94, charge sheet dt.8/11-3-95 was issued against him and as the workman did not submit any reply to the charge sheet, it was decided to conduct the departmental enquiry against him and Shri Y.Krishna Sepuri was appointed as the Inquiry Officer and as in spite of notices, the workman did not attend the enquiry, the Inquiry Officer decided to proceed with the enquiry ex-parte on 23-6-98 and accordingly conducted the enquiry ex-parte and five witnesses were examined on behalf of the management and three documents were also exhibited and the Inquiry Officer submitted his report, holding the workman guilty of the charges and the entire enquiry papers were placed before the competent authority, who being satisfied about the fairness of the departmental enquiry and taking into consideration the materials on record and the past record of the workman terminated the service of the workman vide order dt.16 /17-1-1999 and the enquiry was conducted by following the principles of natural justice.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 28-04-2011, the departmental enquiry conducted against the workman was held to be illegal, unjustified and not in accordance with the principles of natural justice.

It is necessary to mention here that in view of the prayer made by the party no. 1 in the written statement to allow it to lead evidence to prove the charges levelled against the workman, before this Tribunal in case of deciding the preliminary issue in favour of the workman, party no.I was allowed to prove the charges against the workman by adducing evidence before this Tribunal.

5. In order to prove the charges against the workman, party no.1 has examined three witnesses, besides placing reliance on documentary evidence. The three witnesses examined on behalf of party no. 1 are Shri Prakash K. Ram, Shri Madhukar N. Janwe and Shri Kishan Motiram Jiotode.

It is to be mentioned here that evidence of the workman and one Shri Shrinivas R. Bhupeli on affidavit had been filed in rebuttal, on behalf of the workman. As the party no.1 admitted the documents filed by the workman and the documents were admitted into evidence and marked as exhibits on behalf of the workman without formal proof, the workman declined to adduce oral evidence.

6. Before delving into the merit of the matter, I think it necessary to mention the charges under clause 26.30 of the Standing Order has been levelled against the workman. The charge under clause 26.30 reads as follows:-

26.30 - Absence from duty without sanctioned leave or sufficient cause or overstaying beyond ten days after sanctioned leave.

In the charge sheet, it was alleged that the workman remained absent from duty from 05-12-1994 till 8/11-03-1995 (the date of submission of the charge sheet), without sanctioned leave or without permission of any competent authority or without any intimation to the office of the Suptd. Of Mines/ Manager, Sasti colliery.

7. The workman has admitted about his remaining absent from duty w.e.f. 05-12-1994 till 11-03-1995 (the date of submission of the charge sheet). However, it is the case of the workman that his absence from duty was due to his suffering from mental illness and as such, his absence cannot be said to be without sufficient cause and as he was prevented by sufficient cause to attend his duty, it cannot be said that he committed any misconduct.

8. Keeping in view the stands taken by the parties, now, it is to be considered as to whether party no. 1 has been able to prove the charges against the workman.

The first witness for party no. 1, P. K. Ram has stated that the workman is a habitual absentee and he was not interested in his services and management gave him various chances to improve his attendance by cautioning him with various letters and charge sheet dated 10/12-02-1994 was issued against him for remaining absent from 01-01-1994, charge sheet dated 21/22-08-1994 was issued for remaining absent from 04-08-1994 and charge sheet dated 7/10-071994 was issued against him for the total attendance and absence in the year 1992 and 1993 and as the workman remained absent from 05-12-1994, he was issued with the charge sheet dated 08/11-03-1995 and the workman did not report sick to the colliery hospital and he also did not give any information to the management about his alleged sickness during the period of his remaining unauthorized absence from duty.

In the cross-examination, this witness has stated that in 1994 and 1995, he was working as the welfare officer at Sasti Colliery and he did not receive any summons or notice from the court to give evidence and under Rule 73 of the Mines Rules, a welfare officer is not authorized to give evidence in any court or Tribunal, unless he is summoned or noticed to give evidence and the original medical certificates issued by the medical officers of the hospitals of WCL are being deposited with the management. This witness has further stated in the cross-examination that in the charge sheet submitted against the workman, Ext. M-I, nothing has been mentioned about submission of the earlier charge sheets against the workman, as mentioned in paragraph seven of his affidavit.

9. The evidence of witness number two for party no. 1, Madhukar Narayan Janwe is exactly the same as that of R. K. Ram.

In his cross-examination, this witness has stated that there is no specific bar in any Rule of the company for taking treatment by a workman from any private medical practitioner and in Ext. M-I the charge sheet, nothing has been mentioned about submission of earlier charge sheets.

10. The witness, K. M. Jiotode has also stated that the workman remained unauthorized absent from duty w.e.f. 05-12-1994 and he was not granted any leave and he did not give any information about his absence. In his cross-examination, this witness has stated that he cannot say if the workman was ill on 05-12-1994 and onwards.

11. It is clear from the evidence on record and the stand taken by the workman that the workman remained absent from duties w.e.f. 05-12-1994 and for that charge sheet dated 08/11-03-1995 was submitted against him. In view of the stand taken by the workman, now, it is necessary to consider as to whether the workman, is able to show that due to mental illness he was not able to attend his duties.

12. During the course of argument, it was submitted by the learned advocate for the workman that it is clear from the documents filed by the workman and admitted by the party no. 1, Exts. W-I to W-IX and so also the evidence adduced by the management that due to illness, the workman could not able to attend his duties w.e.f. 05-12-1994 and there was sufficient cause for his absence and he did not commit any misconduct.

It was also submitted by the learned advocate for the workman that the punishment of dismissal from services against the workman was passed by the appellate authority, the General Manager and therefore, the workman has lost the chance of appeal and there was violation of principles of natural justice and therefore, the order of punishment is liable to be set aside and the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2007 (115) FLR-427 (SC) (Mohan Matho Vs. M/s. Central Coalfields Ltd.) 1995 (70) FLR-817 (Sujit Ghosh Vs. Chairman & M. D. UCO Bank), 2009 LAB IC (NOC) 829 (J. Prasad Vs. Board of Directors) and AIR 1984 SC-1983 (Naval Kishor Vs. M/ s Darbshaw B. Cursetnee's sons and others)

13. Perused the evidence on record. The workman has not filed a single document to show that he was mentally ill on 05-12-1994. The document Ext. W- VIII, which was issued by a private doctor shows that the workman was under the treatment of Dr. Vijay Ku. Bangirwar from 21-02-1995 to 02-12-1996 for neurotic depression. The rest documents exhibited on behalf of the workman do not relate to the period of absence of the workman. There is nothing on Ext. W - VIII, as to when the same was issued. It is to be mentioned that in the statement of claim, it is claimed by the workman that he was under the treatment of Dr. Vijay K. Bongirwar from 02-12-1995 to 02-12-1996. So, the certificate, Ext. W-VIII does not seem to be a genuine document. Moreover, Ext. W-VIII does not show that the workman was mentally ill from 05-12-1994. From the materials on record, it is found that the workman has not been able to show that due to mental illness, he could not able to attend duties w.e.f. 05.12.1994. It is clear from the evidence on record that party no. 1 has been able to prove the charge that the workman remained absent from duty without sanctioned leave or sufficient cause.

14. Now, the question remains for consideration is the quantum of punishment imposed against the workman. Serious misconduct of unauthorized absence has been proved against the workman. So, the punishment of dismissal imposed against the workman cannot be said to be shockingly disproportionate. Hence, there is no scope to interfere with the punishment imposed against the workman. The punishment of dismissal of the workman from services is upheld.

15. So, far the submission made by the learned advocate for the workman regarding the appellate authority passing the order of punishment is concerned, on perusal of the materials on record, it is found that the order of punishment was passed by the Suptd. of Mines/Manager Sasti colliery and the same was approved by the General Manager as per the prevailing practice and the order of punishment was not passed by the appellate authority.

As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no direct application to this case.

In view of the materials on record and the discussion made above, it is ordered :-

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 22/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/9/2009-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/ 2009) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Ghugus Sub Area of Western Coalfields Limited, and their workmen, received by the Central Government on 30-10-2013.

[No. L-22012/9/2009-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/22/2009 Date: 20-09-2013

Party No. 1 : The Sub Area Manager,
Ghugus Sub Area of WCL,
Post Ghugus Colliery,
Chandrapur (M.S.)-442505

Party No. 2 : The President,
Sanyukta Khadan Mazdoor Sangh,
(AITUC), Ghugus Br. Qtr. No. 223,
WCL, Colony, Ram Nagar,
PO: Ghugus, Chandrapur (MS).

AWARD

(Dated: 20th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sommaya Pappaya, for adjudication, as per letter No.L-22012/9/2009-IR (CM-II) dated 01-07-2009. with the following schedule:—

> "Whether the action of the management of M/s. WCL in converting Shri Sommaya Pappaya from Cat. V to Cat. I and recovering his already paid dues later on from his salary is legal and justified? To what relief is the workman represented through SKMS Union entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sommaya Pappaya, ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a Tub loader w.e.f. 11-11-1974 and worked in the underground as a loader in Nakoda Incline of Ghugus Colliery and during the periodical Medical examination as required under the Mines Act and Rules made there under, he was directed to appear before the Medical Board on 17-06-1996 for his medical examination and after his medical examination, the Medical Board recommended his name for alternate light work on surface, finding him unfit to do his original work of Tub loader in the underground and though he was entitled for protection of his wages, the party no. 1 after deputing him for light work, reduced his basic wages in violation of the provisions of law and placed him in the lowest time rated category of NCWA. It is further pleaded by the workman that at the initial stage of his performing light job, he was paid the basic wages of his original job, so he was confident that his wages would be protected, but at the time of implementation of NCWA-VII in the year 2006, the party no. 1 deducted a sum of Rs. 1,88,946 from the arrears of pay, on the ground of payment of excess basic pay, consequent upon his conversion from piece rated to time rated and due to non-protection of his basic wages, he sustained recurring loss of Rs. 8000 to Rs. 10,000 per month and his conversion from piece rated to time rated was as per administrative order issued by party No.1 and he had never opted for his co nversion from piece rated to time rated worker and due to administrative exigencies as mentioned above, he was transferred by party no. 1 from Nakoda incline to Ghugus OC Mine as per office order dated 27-08-1998 and there was a bipartite settlement between the party no. 1 and the recognized union before the Regional Labour Commissioner, Nagpur on 02-11-1992, for protection of the basic wages of loaders, on their conversion from piece rated to time rated and inspite of such settlement, the party no. 1 did not protect his basic wages and though such pay protection was given to number of loaders on their conversion from piece rated to time rated, he was given discriminating treatment by party no. 1 and deduction of his wages is illegal and arbitrary and he is entitled for protection of his wages, consequent upon his conversion from piece rated to time rated and so get refund of the amount of Rs. 1,88,946 which was illegally deducted from his arrears with interest there on.

3. The party no. 1 in the written statement after denying the pleadings made in the statement of claim has pleaded inter-alia that the case filed by the workman is

false, fabricated, frivolous and not maintainable in the eye of law and the workman has suppressed the material facts and has not approached the Tribunal with clean hands and as such, the reference is liable to be rejected. It is further pleaded by the party no. 1 that the workman was working as a piece rated worker in Nakoda incline and for some technical reason, the mine was closed by the Director General of Mines for safety purpose and as the workman was suffering from some disease and as the Mine was closed, he was transferred to Ghugus open cast mine on 09-09-1998 and which joining at Ghugus, the workman was ready to work as a general mazdoor Cat.I and gave an undertaking being signed by him in presence of the witness and he was converted as a general mazdoor Cat. I as per letter no. 306 dated 9/10-02-1999 and thereafter, his wages was fixed at midpoint basis, as per the guide line provided in the settlement dated 31-10-1995, and the said settlement is binding on the workman and since then, the workman performed the duties of General Mazdoor Cat.I and he is not entitled to any relief.

4. In his rejonder, the workman has pleaded that party no. 1 has suppressed the material fact and has not come up with clean hands. The workman has further reiterated the facts mentioned in the statement of claim.

5. In support of his claim, the workman has examined himself as a witness besides examining one Shri Ramesh Khadasi as the other witness. The workman has also relied on documents. The two witnesses i.e. the workman and Shri Khadasi in their examination -in-chief on affidavit have reiterated the facts mentioned in the statement of claim.

The workman in his cross-examination has stated that at present, he is working as a general mazdoor at Ghugus open cast colliery and he was working in Nakoda colliery as a loader and Nakoda colliery has already been closed for safety reason and as he was injured, while working underground, he was given work on surface. The workman has denied the suggestion that he had consented to work as a general mazdoor. The workman volunteered that his signature was taken on the document without explaining the contents of the same.

Witness, Shri Khadasi in his cross-examination has stated that on document has been filed to show that the workman was doing light job in the underground from 1996 to 1998 and he knows about the settlement dated 31-10-1995 and according to the said settlement, a workman is not entitled for pay protection, in case of his giving consent for conversion from piece rated workman to time rated workman.

On the other hand, the party no. 1 has relied on the documents filed by it and has not adduced any oral evidence. It is also necessary to mention that the case was fixed to 21-08-2013 for argument, but more appeared on behalf of the management, so order was passed to proceed exparte against the party no. 1 and argument was heard from the side of the workman and the case was posted for award. However, it is to be mentioned that the learned advocate for the party no. 1 had filed the written notes of argument on 13-12-2010.

6. At the time of argument, the learned advocate for the workman reiterated the facts mentioned in the statement of claim and submitted that the workman is entitled for the reliefs as claimed.

In the written notes of argument, it was mentioned by the learned advocate for the party no. 1 that as the workman was suffering from some disease and Nakoda Mine was closed, the workman was transferred to Ghugus open cast colliery on 09-09-1998 and while joining at Ghugus, the workman was ready to work as general mazdoor Cat. I and he also gave an undertaking voluntarily and his pay was fixed at midpoint as per the terms of the settlement dated 31-10-1995, which is binding on the workman and as such, the workman is not entitled to any relief.

7. Perused the record including the pleadings of the parties, the oral evidence of the workman and the documents produced by the parties. From the documents produced by the workman it is clear that he was examined by the medical Board of party no. 1 on 17-06-1996 and the Medical Board found him unfit to work in the underground and therefore, recommended to give him alternate light job on surface and accordingly, on medical ground, the workman was given alternate job on surface.

8. On perusal of the documents produced by the party no. 1 and so also by the workman on record, it is found that the workman was transferred to Ghugus Open Cast colliery from Nakoda Incline due to closure of Nakoda Incline and he was converted to daily rated workman from piece rated workman alongwith 229 other workman, as per order dated 02-07-1999. It is also found that the workman submitted a joining letter on 10-09-1998 at Ghugus open cast colliery and he also signed a consent letter to workvoluntarily as a general mazdoor catergory-I at Ghugus open cast colliery.

9. The party no. 1 has claimed that on view of the settlement between it and the recognised union dated 31-10-1995, the workman was not entitled for protection of his wages and according to the provisions of the said settlement, his wages was re-fixed on the midpoint of the commensurate categroy.

10. In view of the admitted facts as already mentioned above, now, it is only to be considered as to whether the workman was not entitled for protection of his basic pay of piece rated loader in view of the settlement dated 31-10-1995.

On perusal of the so called settlement dated 31-10-1995, it is found that the same is not a settlement at all, but the same is the record note of discussion held between the management of WCL and RKKMS union on

31-10-1995 at Nagpur. As the so called settlement dated 31-10-1995 in fact is not a settlement in the true sense, it is held that the same is not binding on the workman.

Moreover, there is also provision in clause 5 of the said settlement reads as follows:—

"Such piece rated workman who may be put in time rated/monthly rated in future by managerial decisions i.e. without, seeking option for time rated/monthly rated or without going through the selection process against internal notification for time rated/monthly rated, will continue to get protection of piece rated wages. Such piece rated workman who come to TR as per option given by them will not get this benefits."

On examination of the case of the workman with the provisions of the aforesaid clause 5, it is found that the transfer and conversion of the workman as time rated workman from piece rated workder was the due to closure of Nakoda Incline. The consent letter taken from the workman to work as General Mazdoor category-I was taken after such conversion. Hence, the putting of the workman in time rated is held to be by way of managerial decision. Therefore, the workman is entitled for protection of his basic pay of piece rated loader. As is is held that the workman is entitled for protection of his wages, the recovery of Rs. 1,88,946 from his arrears of pay revision is not legal and the action of party no. 1 in that respect cannot be sustained. Hence, it is ordered:—

ORDER

The action of the management is relation to their Ghugus open cast mines in in recovering the sum of Rs. 1,88,946 from the arrears of pay of the workman, Shri Sommaya Pappaya is illegal ad unjustified. The workman is entitled for protection of his wages of piece rated worker from the date of his conversion to time rated worker and all consequential benefits. The workman is also entitled for refund of Rs. 1,88,946. The party no. 1 is directed to comply with the directions within 30 days of the notification in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एन बी ऑफ पी जी आर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 87/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-42012/245/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/ 2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of National Bureau of Plant Genetic Resources, and their workmen, received by the Central Government on 30-10-2013.

[No. L-42012/245/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/87/2005 Date: 26-09-2013

Party No.1 : The Director, National Bureau of Plant Genetic Resources, Indian Council of Agriculture Research Pusa Camp, New Delhi .

Party No.2 : The Officer-in-Charge, National Bureau of Plant Genetic Resources, Regional Station, Behind 5 Godown, Shastri Road, Dr. PDKV Campus, Akola. (MS).

AWARD

(Dated: 26th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the.industrial dispute between the employers, in relation to the management of NBPGR and their workman, Smt. Deokabai, W/o. Mahadeorao Thakare, for adjudication, as per letter No. L-42012/245/2004-IR (CM-I1) dated 17-11-2005, with the following schedule:—

"Whether the action of the management of National Bureau of Plant Genetic Resources, New Delhi and Office-in-Charge, Akola of terminating the services of Smt. Deokabai W/o. Late Mahadeorao Thakare, r/o. Somthana, PO: Old City, Akola, Teh & Dist. Akola (MS) is legal and justified? If not, to what relief the disputant workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Deokabai, ('the workman" in short), filed the statement of claim and the management of National Bureau of Plant Genetic Resources, Akola, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that in the year 1982, she was appointed as an agricultural labourer by the party no.1 and she was being paid Rs.1800 per month and initially, though she was engagement as a labourer, subsequently, she was engaged in multipurpose works at Gin Bank, Poli house and Rest house etc. and so also in agriculture work of cleaning and sowing and payment of wages was being made to her by taking her LTI on revenue stamp of one rupee affixed on a register maintained by the party no.1 and her entire service record was unblemished and during her service tenure, there was no memo or any complaint against her and she was in continuous employment of party no.1 from 1982 to June, 2003 and she had completed more than 240 days in a year and therefore, as per the provisions of law, her status had become that of a permanent workman/employee.

The further case of the workman is that party no.1 is an industry and in 1978, party no.1 established its office at Akola and started the work of research and commercial activities by acquiring 52 acres of land from Dr. Punjabrao Krishi Vidyapeth, Akola and started Gin Bank, Poli house and Machhi Talab on various plots developed on the agricultural lands taken from the Vidyapeth and party no.1 also constructed meeting hall, rest house and technical office and for the purpose of carrying out its commercial activities, it employed various persons on permanent basis and at present, eleven permanent employees consisting of peons, technical Assistants, driver, sweeper and labourers are working with party no.1 and party no.1 earns huge income from agriculture operations on the agricultural lands and selling agricultural products in the market and for the purpose of doing agricultural operation, the party no.1 took his services alongwith other employees and the activities of party no.1 are totally commercial and party no.1 uses to earn profit from all these activities and therefore, the party no.1 is an industry and she was a workman.

The further case of the workman is that the party no.1 without following the provisions of law terminated her services in the month of June, 2003 and neither any notice was issued nor any enquiry was made before termination of her services and she was drawing Rs. 2010 per month at that time and as her status was that of a permanent employee, her termination from services by party no.1 is totally illegal and bad in law and therefore is liable to be quashed and set aside and in reference no. CGIT / NGP /196/2000, which is quite similar to her case, it has already been held by this Tribunal that party no.1 is an industry and the termination of its employees was illegal and the same was without following the due procedure of law and her case is more or less similar in nature like that of the employees involved in reference case no. 196/2000.

The workman has prayed to declare her oral termination made by party no.1 in June, 2003 as illegal and to direct party no.1 to reinstate her in service with continuity, full back wages and all the consequential benefits.

3. In the written statement, denying the pleadings made in the statement of claim, party no.1 has pleaded inter alia that it was established by the Indian Council of Agricultural Research (ICAR) , Ministry of Agriculture, Government of India, New Delhi in the year in 1976 and being a nodal organization in India, it has national mandate to plan, conduct, promote and coordinate all activities concerning plant exploration, collection, safe conservation and distribution of both indigenous and introduced genetic variability in crop plants and their wild relatives and it not only provides genetic resources to ongoing crop improvement programmes to sustain continued advances in agricultural productivity and stabilize production, but also conserves them safely to meet needs of future generations and it has no profit making motive, as none of the plants or plant produce are subjected for any sale and it has no trading activity and it is solely and primarily a research institute and for doing the agricultural work in the fields, casual labourers were engaged through contractors and it is an institution engaged in carrying out fundamental research in agriculture and therefore, not an industry as defined u/s. 2 (j) of the Act and for that the claim of the workman is liable to be dismissed.

The further case of party no. 1 is that for number of years, the casual labourers recruited by the departments of the Central Government were deprived of the benefits of regularisation in service and the casual labourers were agitating and were demanding wages at par with class-IV employees of the Government, so the policy relating to engagement of casual labourers in Central Government offices was reviewed in the light of the Hon'ble Supreme Court's judgment dated 17.01.1986 in the case of Surinder Singh and Others Vs. Union of India and based on the directions of the Hon 'ble Apex Court, different departments of Government of India framed suitable scheme to absorb the daily paid casual labourers and to implement those schemes and Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi issued guidelines to their Directorates and other officials throughout India, vide office memorandum no. 49.14/2/86-Estt . (C) dated 07-06-1988 for review of policy on recruitment of casual workers and persons on daily wages and on the basis of the above guidelines, the Government of India, Department of Personnel and Training (DOPT), issued office memorandum no. 57016/2/90-Estt. (C) dated 10-09-1993 and further review the policy and decided that the existing guidelines contained in office memorandum dated 07.06.1988 be continued to be followed and also framed a scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" and the same was brought into force w.e.f. 01-09-1993 and in terms of the guidelines of office memorandum dated 07-06-1988, casual labourers could be legally engaged for work which is of casual/ seasonal nature and it has been following the above

mentioned scheme and based on those guidelines issued directives to their institutes throughout India, for regularisation of the daily paid casual labourers engaged by them and in view of its aforesaid policy, it had directed the departments/units to engage casual labour on contract basis vide order dated 10/14-12-1999 and issued guidelines for allotment of work of various operations to the contractors and accordingly, the contract was allotted by it to one Shri R.S. Ghodpage, Nagpur and a written agreement was signed between it and the contractor on 13-01-2000, which was effective from 16-01-2000 to 15-01-2001 and in terms of the agreement, the contractor was deputing his casual labourers for doing the agricultural work, depending upon its availability and the contractor used to raise a consolidated bill, depending upon the number of casual labourers she had deputed and the said bill was being paid to him by an account payee cheque by it and as per the policy of the Government and the directions of the controlling authority, the contract was extended for a further period of one year from 01-04-2001 to 31-03-2002 and the same was again extended for a further period.

It is specifically denied by party no. 1 that the workman was appointed m 1982 and she was being paid Rs. 1800 per month and she was engaged in multipurpose works and she was in continuous service from 1982 till June, 2003 and she had completed more than 240 days in a year and had become a permanent workman as alleged. It is pleaded by the party no. 1 that the workman was a daily rated labourer and she was paid wages weekly and the workman is not entitled to any relief and in view of the judgment of the Hon'ble Apex Court as reported in (2006) 4 SCC at page 1 (Secretary, State of Karnataka and Others Vs. Umadevi), the claim is not maintainable.

4. In support of his claim, the workman has examined only herself as a witness. The evidence of the workman is on affidavit. In her examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. However, in her cross-examination, the workman has stated that wages was being paid to her on putting her LTI on the acquaintance roll and wages were being paid to her for the days she was engaged by party no. 1.

5. The party no. 1 has examined Mr. Abdul Nizar, the Officer-In-Charge of its Regional Station, Akola as a witness, besides placing reliance on documentary evidence, Exts. M-II to M-LXVIII, the payment sheet-cum-attendance of the workman.

In his examination-in-chief, this witness has also reiterated the facts mentioned in the written statement. The witness has stated that in 1982, the workman worked for 28 days and she worked for 119, 84, 175, 149, 156,160, 179, 157, 156, 156, 154, 154.5, 120, 143.5, 50, 130, 125 and 13 days in the years 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999 and 2000 respectively and she was engaged as daily paid casual labourer for doing agricultural work in the farm in the year 1982 and she had never worked for 240 days in any year and she worked up to 15-01-2000 and she was paid wages on weekly bills and she used to sign on revenue stamp and he has filed wage bills from 01-07-1982 to 15-01-2000, showing the wages paid to the workman and others. This witness has proved the wage sheet as Exts. M-II to M-LXVIII. This witness has also stated that the workman was paid wages for the number of days she worked.

In his cross-examination, this witness has stated that she has no personal knowledge about the engagement and disengagement of the workman and the contents of his affidavit are based on the documents available in the office. This witness has also specifically stated that there is no other document in the office regarding the engagement and disengagement of the workman except Exts. M-II to M-LXVIII. This witness has also stated in his cross-examination that casual labourers were engaged as per the requirements.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed as a agricultural labourer by party no. 1 in the year 1982 and the workman though initially worked as an agricultural labourer, subsequently, she was engaged by party no. 1 to do multipurpose works including agricultural operations and the workman worked continuously from 1982 to June 2003 and the workman had completed more than 240 days of work every year and thus had acquired the status of a permanent workman, but party no. 1 without compliance of the mandatory provisions of law and without giving any prior notice, illegally terminated her service in June, 2003 and as such, the termination of the workman from services is illegal and the party no. 1 did not produce the entire documents relating the engagement of the workman, which is clear from the cross-examination of the witness examined on behalf of the party no. 1 and as such, adverse inference is to be drawn against the party no. 1.

It was submitted by the learned advocate for the workman that the party no. 1 is an industry, as it earns huge income by raising different crops on the lands acquired by it and by selling the crops in the market and the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that party no. 1 is not an industry as defined under section 2(j) of the Act, as it is an institute engaged in carrying out fundamental research in agriculture and there is no profit making motive of the institute and none of the plaints plant produce are subjected to sale.

It was further submitted by the learned advocate for the party no. 1 that the workman was engaged as daily paid casual labourer in the farm of party no. 1 in 1982 and the workman worked up to 15-01-2000 and she was paid her wages on weekly bills after putting LTI on revenue stamp

and she did not work for 240 days in any year and the workman has not produced a single document or any other evidence except her own evidence on affidavit to prove that she had worked continuously from 1982 to June, 2003 and that she had completed 240 days of work every year, though the initial burden was upon her to prove the same and it is clear from the evidence of the witness examined by party no. 1 and the documents, Exts. M-II to M-LXVIII that the workman worked till 15.01.2000 and her engagement was on daily wages basis, as and when required and she did not complete 240 days work in any year and the engagement of the workman was by the contractor as per his requirement and services of the workman were not terminated by party no. 1 and the workman is not entitled to any relief.

In support of the submission, the learned advocate for the party no. 1 placed reliance on the decisions reported in (1997) 4 SCC-391 (Himanshu Kumar Vs. State of Bihar) and AIR 1997 SC-1855 (Physical Research Laboratory Vs. K.G. Sharma).

8. At the outset, I think it necessary to mention that the terms of reference made by the Central Government is quite vague, as the date from which, the services of the workman were terminated by the management of party no. 1, which is quite essential for adjudication of the dispute, has not been mentioned.

The workman though has mentioned in the statement of claim that she was appointed as an agricultural labourer in 1982 by party no. 1 and continued to work till June, 2003, she has neither mentioned the date and month of her appointment nor the date of her termination. She has not mentioned anything as to whether her appointment was an oral appointment or by issuance of any appointment order. The workman has also not mentioned anything as to how she was appointed, that is to say as to whether such appointment was made after her appearance in any test or interview conducted by party no. 1.

It is to be mentioned here that the workman has not produced a single document in support of her claim that she was appointed as an agricultural labourer in 1982 and that she was engaged by party no. 1 in multipurpose works including cultivation and that she worked continuously with party no. 1 from 1982 to June, 2003 and she had completed 240 days of work every year. The workman except her own evidence on affidavit, has not adduced any other evidence in support of her claim.

9. On the other hand, party no. 1 has claimed that the workman was engaged as a daily wages casual labourer to do the agricultural work in 1982 through contractor and her engagement was as and when required by the contractor and when work was available and the workman worked till 15.01.2000 and she had not completed 240 days of work in any year. The evidence of the witness for the party no.1 in this regard has not at all been challenged in the cross-examination. The witness for the party no.1 has given the number of days worked by the workman in each year chronologically in his evidence on affidavit. Such statement of the witness is corroborated by the documents Exts. M-II to M-LXVIII. In the cross-examination of the witness of party no.1, it has been brought out that except the documents Exts. M-II to M-LXVIII, there is no other document in the office of the party no.1 regarding the engagement and disengagement of the workman. So, there is no question of drawing of adverse inference against party no.1 for non-production of documents as submitted by the learned advocate for the workman.

On perusal of the evidence on record, it is found that party no.1 has not been able to show that the engagement of the workman was through the contractor. However, it is clear from the evidence, both oral and documentary that the engagement of the workman by party no.1 was on daily wages casual basis for doing agricultural work as and when required during the period from 1982 till 15.01.2000 and there was no regular appointment of the workman as an agricultural labourer in 1982 and she did not work continuously from 1982 till June, 2003.

10. In view of the stands taken by the parties, the first question requires to be considered is as to whether, the party no.1 is an industry as defined under section 2 (j) of the Act.

In this regard, I think it apropos to mention about the judgment of the Hon'ble Seven Judges Bench of the Hon'ble Apex Court reported in AIR 1978 SC 548 (Bangalore Water Supply Vs. Sewerage Board). In the above judgment, the Hon'ble Apex Court have held that:-

" S. 2(j)- "Industry"- Meaning and scope of what the term includes and excludes - Tests and guidelines for such inclusion and exclusion indicated- Charitable Institutions, Clubs, Educational Institutions, Municipalities, Research Institutes, Co-operative Societies, Establishment of Liberal profession, if industry- Agencies and departments of Governments engaged in any non-sovereign functions when deemed to be industry indicated- Complex of services- Some qualifying for exemptions and some not-Tests.

"Industry" as defined in the sub-section has wide import.

Where there is (i) Systematic activity, (ii) Organized by cooperation between employer and employee (the direct and substantial element is chimerical) and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations."

Taking into consideration the pleadings of the parties regarding the activities and functions performed by party no. 1 and applying the principles enunciated by the Hon'ble Apex Court in the judgment as mentioned above, it is found that party no. 1 is an "industry" as defined under Section 2(j) of the Act.

11. In this case, the workman has taken the stand that she worked continuously from the year 1982 till June, 2003 and she had completed 240 days of work in every year. However, the party no. 1 has denied such claim and has stated that the workman was engaged on daily wages casual basis as and when required from 1982 till 15-02-2000 and she had never completed 240 days of work in any year. In view of the stands taken by the parties, I think it apt to mention about the principles enunciated by the Hon 'ble Apex Court in this regard.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

"Though Section 25- F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25-B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended Section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service) Before a workman can complain of retrenchment being not in consonance with Section 25-F, she has to show that she has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If she has, she would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) have held that:

"Industrial Disputes Act (14 of 1947)—S.25-F, 10-Retrenchment 'compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/ claimant that she had worked for 240 days in a year preceding his termination. Claim denied by management-Onus lies upon claimant to show that she had in fact worked for 240 days in a year. In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that she had worked for 240 days in a year preceding his termination."

The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-l00 (Reserve Bank of India Vs. S.Mani) have held that:-

"Industrial Disputes Act, 1947-Ss.25-F, 25-N,25-B and II-240 days' continuous Service. Onus and burden of proof with respect to—Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission,discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service. Filing of affidavit of workman' to the effect that she had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden. Other substantive evidence needs to be adduced to prove 240 days' continuous service. Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages

for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon 'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary for the workman to prove that she worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

12. The present case in hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that she had in fact worked at least for 240 days in a year preceding his termination.

As already mentioned above, the workman except her own evidence on affidavit has not adduced any other evidence. It is clear from the evidence on record, both oral and documentary as already stated above that the engagement of the workman by party no.1 was on daily wages casual basis for doing agricultural work as and when required during the period from 1982 to 15-01-2000 and there was no regular appointment of the workman as an agricultural labourer and she did not work continuously from 1982 till June 2003. It is also found that the workman has miserably failed to prove that she had completed 240 days of work in the preceding 12 months of the alleged date of his termination or in any year. Hence, the provisions of Section 25-F r/w Section 25-B of the Act are not applicable to the case of the workman. So, the workman is not entitled to any relief. Hence, it is ordered:-

ORDER

The action of the management of National Bureau of Plant Genetic Resources, New Delhi and Office-in-Charge, Akola of terminating the services of Smt. Deokabai, W/o. Late Mahadeorao Thakare, r/o Somthana, Po: Old City, Akola, Teh & Dist. Akola (MS) is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स वेस्ट्र्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 151/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/228/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Dhoptala Sub Area of WCL, and their workmen, received by the Central Government on 30-10-2013.

[No. L-22012/228/2002-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/151/2003 Date: 27-09-2013

Party No. 1 : The Sub Area Manager,
Dhoptala Sub Area of WCL,
Post Sasti, Tah. Rajura, Distt.
Chandrapur (M.S.)

Party No. 2 : Shri Sudarshan Dohe, General Secretary,
Koyla Shramik Sabha (HMS), B-139
Dhoptala Township Po: Sasti, Tah. Rajura
Distt. Chandrapur

AWARD

(Dated: 27th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Smt. Vijay Sampat Mudmalla, for adjudication, as per letter No.L-22012/228/2002-IR (CM-II) dated 11-07-2003, with the following schedule:—

> "Whether the action of the management of Sasti U/G Mine Western Coalfields Ltd., for giving employment to Smt. Vijay Sampat Mudmalla, Widow of Late Sampat Mudmalla Rajam as a dependent of Sampat Mudmalla Rajam, Badli Loader, Sasti U/G Mine is legal and justified? If so, to what relief is the concerned dependent entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, Koyla Shramik Sabha (HMS), ("the union" in short), filed the statement of claim on behalf of the petitioner, Smt. Vijay Sampat Mudmalla, ("petitioner" in short), and the management of WCL,("Party No.1" in short) filed their written statement.

The case of the petitioner as presented by the union in the statement of claim is that it (union) is a registered

Trade union under the Trade Unions Act, 1926 and party no. 1 is a government company and is a state within Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted a Joint Bipartite Committee for the Coal Industry (''JBCCI'' in short) consisting of all employers of Coal Industry and the five Central Trade unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/safety measures and such deliberations is known as ''National Coad Wage Agreements'' (''the NCWAs'' in short) and the JBCCI has several committees and sub-committees for proper and uniform implementation of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contravention of the provisions contained in the NCWAs and the provisions are mandatory and binding on all coal companies including WCL and so far seven NCWAs have been deliberated by JBCCI, known as NCWAs-I, II, III, IV, V, VI, and VII dated 11-12-1974 , 11-08-1979 , 27-07-1989, 19-01-1996, 23-12-2000 and 15-07-2005 with period of operation of the said NCWAs from 01-01-1975 to 31-12-1978, 01-01-1979 to 31-12-1982, 01-01-1983 to 31-12-1986, 01-01-1987 to 30-06-1991, 01-07-1991 to 30-06-1996, 01-07-1996 to 30-06-2001 and 01-02-2001 to 30-06-2006 respectively.

It is further pleaded by the union that the management of Ballarpur Area were in urgent need of Regular Tub Loader for a ugmentation of coal production for their underground mines including mines under Dhoptala Sub-Area and therefore, a requirment was sent to Employment Exchange, Chandrapur for sponsoring the names of candidates and the employment exchange sponsored the names of eligible candidates including Late Sampat Rajam Mudmalla, the deceased husband of the petitioner and the party no. 1 issued letter of interview dated 15-03-1990 calling him to appear before the interview/selection committee on 28-03-1990 at 10. A.M. and Late Sampat was selection for the post of underground Tub Loader in group VA of NCWA-IV and was issued with appointment letter no. 232 dated 15-04-1990 and he was posted at Sasti underground mine and he was designated as ''Badli Tub Loader''and he joined duty on 17-05-1990 as underground piece rated loader in Sasti underground mine and he put unblemished and loyal service and he worked continuously from 17-05-1990 till 11-07-1997, the date of his death and he also put in the requisite attendance as per coal mines provident fund scheme and qualified for membership and party no. 1 submitted the required form 'A' to the office of the CMPF Commissioner, Nagpur and CMPF alloted account no. NGP/32/1534 to late Sampat and the petitioner is the dependent widow of Late Sampat and after the death of Sampat, his family members informed party no. 1 about his death and submitted the death certificate dated 26-07-1997 and accordingly, the name of Late Sampat Rajam Mudmalla was struck off from the rolls of Sasti Colliery w.e.f. 11-07-1997 vide office order no. 2420 dated 3/5-09-1997 and a copy of the said order was endorsed to the petitioner and the petitioner then approached the party no. 1 to provide her employment as a dependent, in terms of the provisions of NCWA by submitting all the relevant and required documents and after scrutiny, the case of the petitoner was submitted by the management of Dhoptala sub area to Ballarpur area and Ballarpur area sent the same to the headquarters vide letter dated 11/12-11-1999 for approval of the employment to the petitioner, but the competent authority rejected the case of the petitioner and the same was informed by the Personnel Manager (IR), Headquarters, Nagpur vide letter dated 29/30-12-1999 to Area Personnel Manager, Ballarpur Area who in his turn endorsed the same to the petitioner and the said decision is arbitrary, illegal and beyond the jurisdiction of the competent authority and therefore, the petitioner approached personally to the party no. 1 time and again, but the same could not bring any result and she also made appeal to the Director (Personnel) WCL explaining her case and pointing out that as her husband had put in 190 days attendance in the year 1994 and 234 days in 1996, her husband should have been regularized by the management and as there was no response to her appeal, she approached the union.

It is further pleaded by the union that as per implementation Instruction no. 18 dated 25-10-1979 of JBCCI, management of WCL is required to provide job to the dependents concerned within two months of receipt of the applications from the claimants and in the event of any difficulty, matter is required to be decided by the implementation committee and as per the definition of workman given in the certified standing order, a Badli/ Substitute employee is also a workman and the petitioner was neither given employment nor she was provided with any monetary compensation, as provided in the NCWA, though she is entitled for the same.

The union has prayed to give employment to the petitioner and to give monetary compensation as per NCWA till employment is given to her.

3. The party no. 1 in the written statement has pleaded inter-alia that Late Sampat Rajam was appointed as a Badli worker and he had never completed 190 days or 240 days as envisaged under law to attain the status of a regular workman and as such, the benefit sought by the petitioner is not applicable and as the deceased workman did not attain permanent status, the application of the Standing Order or the provisions of NCWA-VI do not apply to the deceased workman and as such, the reference is liable to be dismissed. The party no. 1 in the written statement has admitted that the deceased workman

expired on 11-07-1997 and the request of the legal heirs was rejected on 30-12-1999.

The further case of the party no. 1 is that the reference was made in 2003 and though it has been held by the Hon'ble Apex Court and Hon'ble High Courts that law of limitation is not applicable to the Act, however, inordinate delay, is a proper ground for refusing the reference under Section 10 of the Act and in view of the petitioner raising the dispute after a very long period of time, she is not entitled for the reliefs as prayed for and the reference is liable to be dismissed.

6. At the time of argument, it was submitted by the learned advocate for the petitioner that the union is a registered union and the union is entitled to raise the dispute on behalf of the petitioner, the dependent of Late workman Sampat Rajam and the appointment of late Sampat Rajam was made as a Badli Loader and he was eligible for regularization after completion of 190 days of work in 12 calendar months and the deceased workman was kept under forced idleness and the petitioner has claimed employment on the basis of the provisions of the NCWA and not on compassionate ground and there is no bar in the NCWA or in the Certified Standing Order of WCL for providing employment to the dependents of a Badli worker and as such, the action of the party no. 1 in not providing the petitioner employment on the ground that her husband was a Badli worker is not sustainable and as such, the petitioner is entitled for employment.

In support of such contentions, reliance has been placed by the learned advocate for the petitioner on the decisions reported in AIR 1968 SC-1416 (Gopal Krishna Vs. Md. Hazi Latif), AIR 1986 SC-136 (H.D. Singh Vs. Reserve Bank of India), AIR 1994-SC-853 (S.P. Chengar W. Naidu Vs. Jagannath), 1990 (60) FLR-215 (Workmen Vs. Presiding Officer and Others, (2000) I-LLJ-197 (MCPL, Emp. Union Vs. Secy. Labour), 1993 (I) BLJ-52 (M/s. BCCL Vs. Their Workmen), AIR 1986 SC-458 (Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation), 2004 I-CLR-872 (Panyanm Cement Employees Union Vs. Commissioner of Labour Hyderabad), and 2007 (115) FLR-427 (Mohan Mahato Vs. M/s. Central Coalfields Ltd.)

7. Per contra, it was submitted by the learned advocate for party no.1 that the union has no locus standi to raise the present dispute and deceased Sampat Rajam, the husband of the present petitioner was employed as a General Badli Loader at Sasti U/G mine and he expired on 11-07-1997 and the services of the late Sampat Rajam was not regularized, as he did not complete 190 days of attendance in any year and he remained as Badli worker till his death and he was not given status of permanent employee as per Standing Order of the Company and as temporary, casual and Badli workers are not regular employees of the coal mines, they are not entitled to get the benefits of compassionate appointment as provided under the NCWA, hence, the application filed by the petitioner was rejected and the petitioner is not entitled to any relief.

8. Keeping in mind the principles enunciated by the Hon'ble Courts in the decisions cited by the parties, the present case at hand is to be considered.

9. So far the first contention regarding the union having no authority to raise the dispute on behalf of the petitioner is concerned, it is found from the pleadings of the parties that the union had raised the dispute before the ALC on behalf of the petitioner and the Central Government has referred the matter for adjudication. In view of the provision of Section 36 (3) of the Act, it is held that the union is competent to raise the dispute.

10. It is clear from the pleadings of the parties, evidence on record and the submissions made by the learned advocate for the parties that the claim of the petitioner to give her employment was rejected by the party no. 1 only on the ground that she being the dependent of a Badli worker is not entitled for employment. So, the only point for consideration is whether the dependent of a Badli worker is entitled for employment as per the provisions of NCWA.

12. The appointment of deceased Sampat Rajam Mudmalla on 17-05-1990 as a Badli loader and that he worked till 11-07-1997, the date of his death has not been disputed by the parties. NCWA-V was in force when the petitioner submitted her application for giving her employment. It is also not disputed that there was provisions in NCWA-IV, V & VI for giving employment to one of the dependents of a worker, who dies while in service. As on the date of death of Shankar, NCWA-V was in force, it is necessary to consider as to whether the petitioner is entitled for employment as provided in NCWA-V.

At this juncture, I think it necessary to mention the relevant portions of clause 9.5 of NCWA V, which is in respect of giving employment/Monetary compensation to female dependent of workmen, who dies while in service and who are declared medically unfit as per clause 9.4.0 above would be regulated as under :

(i) In case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation of Rs. 3000 per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under clause 9.4.0 if the female dependent is below the age of 45 years, she will have the option either to accept the monetary compensation of Rs. 3000 per month or employment.

In case the female dependent is above 45 years of age, she will be entitled only to monetary compensation and not to employment.

It is clear from the above clause that a female dependent of a workman is entitled to employment or monetary compensation if the workman dies while in service. The specific word mentioned in the said clause is ''workman'' and nothing else. It does not specify the category of workman. It also does not say that dependants of Badli workman are not entitled for the benefit of the same. It also does not provide that dependents of Badli worker, who had not done 190/240 days of work in any calendar year, are not entitled to get the benefit of the provisions.

Now, it is to be considered as to whether a Badli worker is a workman or not NCWA V does not have any such definition. It is clear from the appointment letter issued by party no. 1 regarding the appointment of Late Sampat Rajam Mudmulla that the privisions of certified standing order of the WCL were applicable to deceased Sampat Rajam. The certified standing order provide the definition of ''Workman''. In section 1 of the said standing order (Commencement and Application), it is mentioned that it shall apply to all workman employed in all units of M/s. Western Coalfields Limited situated in different place in the countary which come within the definition of Industrial Employment (Standing Orders) Act, 1946 and include all workman governed by the National Coal Wage Agreement, Section 3.1 of the said Standing Order provides the classification of workman for the purpose of the Standing Order. The same reads as follows:

(a) Apprentice
(b) Badli or Substitute
(c) Casual
(d) Permanent
(e) Probationer
(f) Temporary

The above classification shows that Badli or Substitute employee is also a workman.

The party no. 1 has not been able to show that the provisions of the Standing Order or NCWAs are not applicable to Badli worker.

Whent there is no bar either in the NCWA or in the Certified Standing Order to give the benefit of clause 9.5.0 of the NCWA VI to dependents of Badli workman(whether he had done 194/240 days of work in any calendar year or not), the decision of the party no. 1 that the petitioner is not entitled for employment is not justified. Hence, it is order :

ORDER

The action of the management of Sasti U/G Mine Western Coalfields Ltd. for giving employment to Smt. Vijay Sampat Mudmalla, Widow of Late Sampat Mudmalla Rajam as a dependent of Sampat Mudmalla Rajam, Badli Loader, Sasti U/G Mine is illegal and unjustified. The petitioner Vijay Madmulla is entitled for employment in accordance with the privisions of the NCWAs in force at present. The party no. 1 Sub Area Manager, Dhoptala Sub Area Opencast of WCL is directed to give employment to the petitioner in accordance with the provisions of NCWAs and other rules as applicable within a month of the publication of the award. The petitioner is not entitled to get any monetary benefit from two months after submission of her application for employment till the actual date of her employment, as claimed in the statement of claim.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स वेस्ट्र्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 33/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/115/2003-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/ 2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of New Majri Open Cast-II(A), Sub Area of W.C.L. and their workmen, received by the Central Government on 30-10-2013.

[No. L-22012/115/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/33/2004 Date: 23-09-2013

Party No. 1 : The Sub Area Manager,
New Majri Open Caste-II(A) Sub area of WCL, PO: Shivajinagar,
Distt. Chandrapur

Versus

Party No. 2 : Shri D.M.Dongarwar, Secretarty,
Bhartiya Koyla Khadan Mazdoor Sangh (BMS), Subhash ward, Ganeshnagar,
Near Sai Mandir, Warora, PO & Tah. Warora, Distt. Chandrapur (MS).

AWARD

(Dated: 23rd September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Uday Kumar Chourasiya for adjudication, as per letter No. L-22012/115/2003-IR (CM-II) dated 23-02-2004, with the following schedule;—

> "Whether the action of the management in relation to New Majri Open Cast, Sub Area of Western Coalfield Ltd., in denying promotion to Shri Uday Kumar Chaurasiya, Excavation Foreman-Gr. B as Foreman Incharge Gr. 'A' and Shri T.K. Bannerji, EP Electrician as Excavation Foreman Gr. 'B' on the ground that the workman concerned did not possess Technical Supervisory Certificate is legal and justified? If not, to what relief they are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, "Bhartiya Koyala Khadan Mazdoor Sangh (BMS)," ("the union" in short) filed the statement of claim on behalf of the workmen, Shri Uday Kumar Chaurasiya and Shri T.K. Banerji, ("the workmen" in short) and the management of WCL, ("Party No.1" in short) filed their written statement.

The case of the two workmen, namely, Shri Uday Kumar Chaurasiya and Shri T.K. Banerji as presented by the union in the statement of claim is that it (union) is a registered Trade union under the Trade Unions Act, 1926 and party no. 1 is a government company and is a state within the provisions of Article 12 of the Constitution of India and under the approval of Ministry of Coal, Central Government constituted Joint Bipartite Committee for the Coal Industry ("JBCCI" in short) consisting of all employers of Coal Industry and the five central Trade unions and the JBCCI jointly deliberated over the wage structure including dearness allowance, fitment in revised scale of pay, Pension, fringe benefits, service conditions and other allied matters including welfares/safety measures and such deliberations is known as "National Coal Wage Agreements" ("the NCWA" in short) and the JBCCI has several committees and sub-committees for proper and uniform implemention of the provisions of NCWA in the entire Coal Industry and for maintaining uniformity and proper implementation, the Secretary, JBCCI issues implementation instructions from time to time and no unilateral decision can be taken by any subsidiary in contradication of the provisions contained in the NCWAs.

The further case as projected by the union in the statement of claim is that workman, Uday Kumar Chourasiya had obtained ITI Certificate in wireman trade in the year 1971 from Industrial Training Institute, Katihar, Bihar and he was appointed as "Auto Electrician" in Cat 'D' vide letter dated 7/8-03-1976 of the General Manager, Wardha Valley, Chandrapur and was posted at New Majri Open Cast Project and he joined on 23-03-1976 and since then, he has been putting continuous, sincere, honest and loyal service to the company and vide letter no. 63 dated 08-06-1983 of the Suptd. /Manager Open Cast Mine, Majri, he was promoted as "E.P. Electrician in grade-II/Group 'C' from Auto Electrician" and his designation was changed by managment as "E.P. Electrician" from "Auto Electrician", but in really, he was working as Auto Electrician on dozers, dumpers, drills, crans etc. under 24 Volts and two other similarly situated electricians were promoted as"E.P. Electrician" grade-B, although they were working as Auto Electrician on heavy machines and as per office order no. 4599 dated 29-09-1987 of the Sub-Area Manager, New Majri Area, he was re-designated as Auto Electrician alongwith Grurudayal Singh and Md. Jalil and vide letter no. 1167 dated 25-02-1988/05-03-1988 of the said sub-area Manager, his designation as Auto Electrician was confirmed and as there was acute shortage and requirement of Mechanical Foreman in Majri Area, the Personnel Manager vide letter no. 347 dated 23-01-1994, directed him, Gurudayal Singh and Md. Jalil to appear before DPC on 25-01-1994 for the post of Foreman and after scrutiny of certificates, interview and trade test, he was promoted as Foreman (Excavation) in T & S grade-B vide office order no. 4045 dated 14/25-08-1994 and he joined in the post on 27-08-1994 and he was directed by the Superintending Engineer to work in dumper maintenance section in rotation shift i.e. purely mechanical work and vide order dated 9-03-1996 of the Manager, New Majri open cast mine, he was appointed as Foreman Dumper and he was entrusted with the job of supervision of dumpers.

The further case of the union is that the workman vide his letter dated 17-10-2000, he made representation to the Chief General Manager, Majri for his promotion as a Foreman In-charge in Technical and Supervisory Grade-A, pointing out the case of Md. Jalil, his coworker and similarly situated case, who was transferred to Wani North Area and was promoted as Foreman-In-Charge in T&S grade-A vide order no. 2 dated 31-08-1998/01-09-1998 of Dy. Chief Manager, Wani North Area, without asking for any further technical certificate while giving him promotion and Md. Jalil did not possess electrical supervisoryship certificate and such certificate was not necessary for his promotion to the post of Foreman T&S grade-A, in view of his earlier promotion by the management in the post of Foreman T&S grade-B and the nature of the work performed by him and in reply to his representation dated 17-10-2000, the personnel manager, new Majri open cast mine intimated him vide letter no. 2200 dated 21/22-10-2000 that for promotion to the post of Electrical Foreman-in-charge,

Electrical Supervisory certificate valid for mines is required, without considering his actual deployment in dumper section from time to time, the case of Md. Jalil and without taking the approval of the competent authority and when the workman clarified the matter that due to his working in dumper, maintenance section, the electrical supervisory certificate is not required for promotion to grade-A, party no. 1 remained silent and though repeatedly the workman made representations, party no. 1 did not pay any head to the same and there has been practice, precedent and system to give promotion to T&S grade-A from Foreman (Excavation) T&S Grade-B, without having electrical supervisory certificate and Shri Mohendra Singh, Shri Madhukar Karaskar and Shri Gurucharan Singh have been given such promotion and by virtue of the nature of work performed by him in dumper maintenance section and his promotion to T&S grade-B, his having no electrical supervisor ship certificate cannot be a bar for his promotion to T&S grade-A and he is entitled to get promotion to T&S grade-A in accordance with the cadre scheme as circulated vide implementation instructions no. 50, after his completing of four years experience as Foreman (Mechanical) i.e. on and from 27-08-1998.

It is further pleaded by the union that workman, Shri T. K. Banarjee has already been promoted to Technical and Supervisory grade-B w.e.f. 01-09-2006, so the case of workman Shri T.K. Banarjee be treated as closed.

The union has prayed for a declaration that the workman, Shri Uday Kumar Chaurasia is entitled for promotion to T&S grade-A w.e.f. 27-04-1998 with consequential benefits.

3. The party no.1 in the written statement has pleaded inter-alia that the reference is vague as in the same, it has not been mentioned as to from which date the promotion was claimed and therefore, the reference is not maintainable and the dispute is highly belated and on that ground also, the reference is not maintainable.

It is further pleaded by party no. 1 that as per cadre scheme formulated under the NCWA, Promotional channels have been prescribed for all cadres including the cadre scheme for excavation personnel and promotion to the employees is given following the procedure laid down under the cadre scheme and the designation, scale of pay, minimum qualification (educational/techanical), eligibility of promotion and mode of promotion/ selection etc are given in the cadre scheme and promotion is given based on the recommendation of the departmental promotion committee ("DPC" in short), availability of sanctioned post and administrative requirement and for promotion to the post of Foreman In-charge Electrician, the employee must possess the electrical supervisory certificate as per implementation instruction no. 32 dated 15-07-1992 and implementation instruction nos. 39 dated 10-08-1982 and 67 dated 03-09-1986 are also relevant in this regard and the issue of carrier growth of senior mechanic excavation category-A and senior EP Electrician Excv. Cat.-A to the post of Foreman (Excv./Mech.) in T&S grade-B and Foreman (Excv./Elect.) in T&S Gr.B respectively was raised in the company level IR meeting and subsequently, the matter was placed before the competent authority and it was decided that the promotion to the post of Foreman (Excv./Mech.) in T&S Grade-B and Foreman (Excv./Elect.) in T&S grade-B would be regulated as per earlier scheme as one time decision for carrier growth of all such senior mechanics Excv. Cat.-A and Sr. EP Electrician Excv. Cat.-A against the sanctioned vacant posts in Manpower Budget for 2005-2006 and was applicable to such employees who were eligible for promotion as per afore referred scheme and the said one time carrier growth opportunity to excavation personnel was circulated vide circular no. 1436 dated 21-07-2005 and the workman Uday Kumar Chaurasia was holding wire man certificate from ITI and he was appointed as Electrician category-D in 1978 and was promoted to the post of EP Electrician vide order dated 08-06-1983 and he accepted the said promotion and resumed his duties without any objection and he was again promoted to the post of Foreman (Excv.) in T&S grade-B in the year 1994 and promotion to the post of Foreman in T&S Grade-A was given to those persons, who were possessing the statutory certificate i.e. Electrical Supervisory Certificate issue by DGMS and without there being the said certificate, promotion to the post of Foreman Incharge (electrical) cannot be given and as the workman, Shri Chaurasia did not possess the said certificate, he was not entitled to the aforesaid post and the workman is claiming promotion to the post of Foreman (T&S) grade-A, only on the ground that other few employees had been promoted and the workman cannot compare his case with others and it is to be seen as to whether the workman is entitled to get the promotion as per cadre scheme applicable to him and if the workman is not eligible to claim promotion to the said post, the same cannot be granted to him only on the ground that same others had been given promotion and the workman, Shri Chaurasia is not entitled for consideration for promotion to the post of Foreman Incharge (T&S) grade-A and as the workman, Shri T.K. Banerjee has already been promoted to the post of (Excv./Elect.) (T&S) Grade- B, his claim has no merit.

It is further pleaded by party no.1 that the workman, Shri Chaurasia is to see that whether he is eligible for promotion to the post he has claimed, in accordance with law and if someone has availed illegal benefits, the management cannot be forced to commit such mistake repeatedly by granting such illegal benefits to other employees and the employees namely, Gurudayal Singh and Md. Jalil were not similarly situated and therefore, the workman cannot compare his case with those two employees and the workman is not entitled to ask for advantage out of any bonafide mistake committed by it

and Shri Mahendra Singh, Shri Madhukar Karaskar and Shri Gurucharan Singh were given promotion strictly to the cadre scheme and the workman is not entitled to any relief.

4. Both the parties did not lead any oral evidence and relied on documentary evidence only.

5. At the time of argument, the learned advocate for the workman reiterated the grounds mentioned in the statement of claim and submitted that the workman is entitled for promotion to Grade-A in terms of NCWA w.e.f. 27-07-1998 with consequential benefits.

6. Per contra, it was submitted by the learned advocate for the party no.1 that promotion is a management function and as such, there is no scope for the Tribunal to consider the merits of various employees and to decide whom to promote and whom not to promote and there was delay in raising the dispute and as such, the reference is not maintainable. It was further submitted by the learned advocate for the party no.1 that for promotion to the post of Foreman Incharge (T&S) grade-A, electrical supervisory certificate valid for mines is required and the workman doesn't possess such a certificate and therefore, he cannot be consider, for promotion to Grade-A and the workman cannot be promoted by taking into consideration of the promotion given to some other employees by party no.1 and the workman is not entitled to any relief.

In support of the contention the learned advocate for the party no.1 placed reliance on the decisions reported in AIR 1966 SC-668 (Management of Brooke Bond India Ltd, Vs. Their workmen) and (2001) 1SCC-240 (A.J. Fernandis Vs. Divisional Manager, South Central Railways).

7. The appointment of the workman and his promotion upto Foreman in (T&S) grade-B has not been disputed by the party no.1. Party no.1 has also not disputed about the workman submitting representation for his promotion as Foreman Incharge in (T&S) grade-A and refusal of party no.1 for such promotion, on the ground of the workman having no electrical supervisorship certificate valid for mines. The main claim of the workman is that some other employees, namely, Shri Md. Jalil, Shri Mahendra Singh, Shri Madhukar Karaskar and Shri Gurucharan Singh were promoted to (T&S) Grade-A from Grade-B without having any electrical supervisory certificate and since he was promoted to Grade-B and worked in the dumper maintenance section, there was no requirement of the said certificate.

8. On perusal of implementation instruction no.32, it is found that for promotion to Foreman Incharge Grade-A, the required qualification is matric and electrical supervisorship certificate valid for mines. Admittedly, the workman doesn't have the electrical supervisory certificate. The workman has claimed that four employees named above were promoted without having such certificate from grade-B to grade-A. The order of promotion of the said four employees has been placed on record. However, no document has been produced by the workman to show that they did not have the required supervisory certificate or that those four employees were promoted by giving them exemption of holding the supervisory certificate.

It is well settled that a workman cannot base his claim and cannot ask for relief basing on an illegal order, does not create any right in favour of others. As the workman doesn't have the required qualification (technical) for promotion to (T&S) grade-A, he is not entitled for the reliefs claimed by him.

As prayer has been made to close the case of the workman, Shri T.K. Banerjee, due to the promotion already given to him, a "no dispute" award is to be passed against him. Hence, it is ordered:

ORDER

The reference is answered in negative and against the workman Shri Uday Kumar Chaurasia. The workman Shri Uday Kumar Chaurasia is not entitled to any relief. A "No dispute" award is passed in respect of the workman Shri T.K. Banerjee.

J.P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एन बी ऑफ पी जी आर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 88/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-42012/247/2004-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/ 2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of National Bureau of Plant Genetic Resources, and their workmen, received by the Central Government on 30-10-2013.

[No. L-42012/247/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/88/2005 Date: 26-09-2013

Party No. 1 : The Director,

National Bureau of Plant Genetic Resources, Indian Council of Agriculture Research Pusa Camp, New Delhi.

: The Officer-in-Charge, National Bureau of Plant Genetic Resources, Regional Station, Behind 5 Godown, Shastri Road, Dr. PDKV Campus, Akola. (MS).

Party No. 2 : Shri Vasanta S/o Sukhadeo Nimkale, R/o Somthana, PO: Old City Akola, Akola. (MS).

AWARD

(Dated: 26th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of NBPGR and their workman, Shri Vasanta, for adjudication, as per letter No.L-42012/247/2004-IR (CM-II) dated 17-11-2005, with the following schedule:—

"Whether the action of the management of National Bureau of Plant Genetic Resources, New Delhi and Office-in-Charge, Akola of terminating the services of Shri Vasanta S/o, Sukhadeo Nimkale, R/o. Somthana, PO: Old City Akola, Teh & Dist. Akola (MS) is legal and justified? If not, to what relief 'the disputant workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vasanta, ("the workman" in short), filed the statement of claim and the management of National Bureau of Plant Genetic Resources, Akola, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that in the year 1982, he was appointed as a chowkidar-cum-peon-Labourer by party no.1 and he was being paid Rs. 1800 per month and his name was sponsored by the employment exchange and initially, though he was engaged as a labourer, subsequently, he was engaged in multipurpose works, such as chowkidari at Gin Bank, Poli house and Rest house etc and so also in agriculture work of cleaning and sowing and payment of wages was being made to him by taking his signature on revenue stamp of one rupee affixed on a register maintained by party no.1 and his entire service record was unblemished and there was no memo or any complaint against him and he was in continuous employment of party no.1 from 1984 to June, 2003 and he had completed more than 240 days in a year and therefore, as per the provisions of law, his status had become that of a permanent workman/employee.

The further case of the workman is that party no.1 is an industry and in 1978, party no.1 established its office at Akola and started the work of research and commercial activities by acquiring 52 acres of land from Dr. Punjabrao krishi Vidyapeth, Akola and started Gin Bank, Pali house and Machhi Talab on various plots developed on the agricultural lands taken from the Vidyapeth and party no. 1 also constructed meeting hall, rest house and technical office and for the purpose of carrying out its commercial activities, it employed various persons on permanent basis and at present, eleven permanent employees consisting of peons, technical Assistants, driver, sweeper and labourers are working with party no.1 and party no. 1 earns huge income from agriculture operations on the agricultural lands and selling agricultural products in the market and for the purpose of doing agricultural operation, the party no.1 took his services alongwith other employees and the activities of party no. 1 are totally commercial and party no. 1 uses to earn profit from all these activities and therefore, the party no.1 is an industry and he was a workman.

The further case of the workman is that the party no.1 without following the provisions of law terminated his services in the month of June, 2003 and neither any notice was issued nor any enquiry was made before termination of his services and he was drawing Rs. 2010 per month at that time and as his status was that of a permanent employee, his termination from services by party no.1 is totally illegal and bad in law and therefore is liable to be quashed and set aside and in reference no. CGIT / NGP /196/2000, which is quite similar to his case, it has already been held by this Tribunal that party no.1 is an industry and the termination of its employees was illegal and the same was without following the due procedure of law and his case is more or less similar in nature like that of the employees involved in reference case no. 196/2000.

The workman has prayed to declare his oral termination made by party no.1 in June, 2003 as illegal and to direct party no.1 to reinstate him in service with continuity, full back wages and all the consequential benefits.

3. In the written statement, denying the pleadings made in the statement of claim, party no.1 has pleaded inter-alia that it was established by the Indian Council of Agricultural Research (I CAR), Ministry of Agriculture, Government of India, New Delhi in the year in 1976 and being a nodal organization in India, it has national mandate to plan, conduct, promote and coordinate all activities concerning plant exploration, collection, safe conservation and distribution of both indigenous and introduced genetic variability in crop plants and their wild relatives and it not only provides genetic resources to ongoing crop improvement programmes to sustain continued advances in agricultural productivity and stabilize production, but also conserves them safely to meet needs of future

generations and it has no profit making motive, as none of the plants or plant produce are subjected for any sale and it has no trading activity and it is solely and primarily a research institute and for doing the agricultural work in the fields, casual labourers were engaged through contractors and it is an institution engaged in carrying out fundamental research in agriculture and therefore, not an industry as defined u/s. 2 (j) of the Act and for that the claim of the workman is liable to be dismissed.

The further case of party no.1 is that for number of years, the casual labourers recruited by the departments of the Central Government were deprived of the benefits of regularisation in service and the casual labourers were agitating arid were demanding wages at par with class-IV employees of the Government, so the policy relating to engagement of casual labourers in Central Government offices was reviewed in the light of the Hon'ble Supreme Court's judgment dated 17-01-1986 in the case of Surinder Singh and others Vs. Union of India and based, on the directions of the Hon 'ble Apex Court, different departments of Government of India framed suitable scheme to absorb the daily paid casual labourers and to implement those schemes and Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi issued guidelines to their Directorates and other officials throughout India, vide office memorandum no. 49. 14/2/86-Estt (C) dated 07-06-1988 for review of policy on recruitment of casual workers and persons on daily wages and on the basis of the above guidelines, the Government of India, Department of Personnel and Training (DOPT), issued office memorandum no. 57016/2/90-Estt.(C) dated 10-09-1993 and further review the policy and decided that the existing guidelines contained in office memorandum dated 07-06-1988 be continued to be followed and also framed a scheme called "casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" and the same was brought into force w.e.f. 01-09-1993 and in terms of the guidelines of office memorandum dated 07-06-1988, casual labourers could be legally engaged for work which is of casual/ seasonal nature and it has been following the above mentioned scheme and based on those guidelines issued directives to their institutes throughout India, for regularisation of the daily paid casual labourers engaged by them and in view of its aforesaid policy, it had directed the departments/units to engage casual labour on contract basis vide order dated 10/ 14-12-1999 and issued guidelines for allotment of work of various operations to the contractors and accordingly, the contract was allotted by it to one Shri R.S. Ghodpage, Nagpur and a written agreement was signed between it and the contractor on 13-01-2000, which was effective from 16-01-2000 to 15-01-2001 and in terms of the agreement, the contractor was deputing his casual labourers for doing the agricultural work, depending upon its availability and the contractor used to raise a consolidated bill, depending upon the number of casual labourers he had deputed and the said bill was being paid to him by an account payee cheque by it and as per the policy of the Government and the directions of the controlling authority, the contract was extended for a further period of one year from 01-04-2001 to 31-03-2002 and the same was again extended for a further period.

It is specifically denied by party no.1 that the workman was appointed in 1982 and he was being paid Rs . 1800/- per month and he was engaged in multipurpose works and he was in continuous service from 1982 till June, 2003 and he had completed more than 240 days in a year and had become a permanent workman as alleged. It is pleaded by the party no.1 that the workman was engaged as a daily paid casual labourer for doing agricultural work in the year 1982 in the farm and he did not work for 240 days in any year and he was paid wages weekly and the workman is not entitled to any relief and in view of the judgment of the Hon'ble Apex Court as reported in (2006) 4 SCC at page 1 (Secretary, State of Karnataka and Others Vs. Umadevi), the claim is not maintainable.

4. In support of his claim, the workman has examined only himself as a witness. The evidence of the workman is on affidavit. In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has stated that wages was being paid to him on signing the acquaintance roll and wages were being paid to him for the days he was engaged by party no. 1.

5. The party no.1 has examined Mr. Abdul Nizar, the officer-In-Charge of its Regional Station, Akola as a witness, besides placing reliance on documentary evidence, Exts. M-II to M-LVIII, the payment sheet-cum-attendance of the workman.

In his examination-in-chief, this 'witness has also reiterated the facts mentioned in the written statement. He has further stated that the workman was engaged as daily paid casual labour for doing agricultural work in the year 1982 and he worked up to 15-1-2000 and he was paid wages on weekly bills and he used to sign on revenue stamp and he has filed wage bills from 1-7-1984 to 15-1-2000, showing the wages paid to the workman and others. This witness has proved the wage sheet as Exts. M-II to M-LVIII. This witness has also stated that the workman was paid wages for the number of days he worked and wages was paid to him for 78, 132, 86, 12, 66, 78, 139.5, 157, 154, 130, 65 and 13 days in the year 1982, 1983, 1984, 1986, 1992, 1994, 1995, 1996, 1997, 1998, 1999 and 2000 respectively and the workman has not worked for 240 days in any year and he worked only for the number of days as mentioned above, when work was available in the season.

In his cross-examination, this witness has stated that he has no personal knowledge about the engagement and disengagement of the workman and the contents of his affidavit are based on the documents available in the office.

This witness has also specifically stated that there is no other document in the office regarding the engagement and disengagement of the workman except Exts. M-II to M-LVIII. This witness has also stated in his cross-examination that casual labourers were engaged as per the requirements.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed as a chowkidar-cum-peon-Labourer by party no. 1 in the year 1982 and his name was sponsored by the employment exchange and the workman though initially worked as a Labourer, subsequently, he was engaged by party no.1 to do multipurpose works including agricultural operations and the workman worked continuously from 1982 to June 2003 and the workman had completed more than 240 days of work every year and thus had acquired the status of a permanent workman, but party no. 1 without compliance of the mandatory provisions of law and without giving any prior notice, illegally terminated his service in June, 2003 and as such, the termination of the workman from services is illegal and the party no. 1 did not produce the entire documents relating the engagement of the workman, which is clear from the cross-examination of the witness examined on behalf of the party no. 1 and as such, adverse inference is to be drawn against the party no. 1.

It was submitted by the learned advocate for the workman that the party no. 1 is an industry, as it earns huge income by raising different crops on the lands acquired by it and by selling the crops in the market and the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no.l that party no.1 is not an industry as defined under section 2(j) of the Act, as it is an institute engaged in carrying out fundamental research in agriculture and there is no profit making motive of the institute and non of the plaints plant produce are subjected to sale.

It was further submitted by the learned advocate for the party no.1 that the workman was engaged as daily paid casual labourer in the farm of party no.1 in 1982 and the workman worked up to 15-01-2000 and he was paid his wages on weekly bills after signing on revenue stamp and he did not work for 240 days in any year and the workman has not produced a single document or any other evidence except his own evidence on affidavit to prove that he had worked continuously from 1982 to June, 2003 and that he had completed 240 days of work every year, though the initial burden was upon him to prove the same and it is clear from the evidence of the witness examined by party no.1 and the documents, Exts. M-II to M-LVIII that the workman worked till 15-01-2000 and his engagement was on daily wages basis, as and when required and he did not complete 240 days work in any year and the engagement of the workman was by the contractor as per his requirement and services of the workman were not terminated by party no. 1 and the workman is not entitled to any relief.

In support of the submission, the learned advocate for the party no. 1 placed reliance on the decisions reported in (1997) 4 SCC-391 (Himanshu Kumar Vs. State of Bihar) and AIR 1997 SC-1855 (Physical Research Laboratory Vs. K.G. Sharma).

8. At the outset, I think it necessary to mention that the terms of reference made by the Central Government is quite vague, as the date from which, the services of the workman were terminated by the management of party no. 1 , which is quite essential for adjudication of the dispute, has not been mentioned.

The workman though has mentioned in the statement of claim that he was appointed as a chowkidar-cum-peon-cum-Labourer in 1982 by party no.l and continued to work till June, 2003, he has neither mentioned the date and month of his appointment nor the date of his termination. The workman though has mentioned in the statement of claim that his name was sponsored by the employment exchange, he has not mentioned anything as to whether his appointment was an oral appointment or by issuance of any appointment order. The workman has also not mentioned anything as to how he was appointed, that is to say as to whether such appointment was made after his appearance in any test or interview conducted by party no. 1.

It is to be mentioned here that the workman has not produced a single document in support of his claim that he was appointed as a chowkidar-cum-peon- Labourer in 1982 and that his name was sponsored by the employment exchange and that he was engaged by party no. 1 in multipurpose works including cultivation and that he worked continuously with party no. 1 from 1982 to June, 2003 and he had completed 240 days of work every year. The workman except his own evidence on affidavit, has not adduced any other evidence in support of his claim.

9. On the other hand, party no. 1 has claimed that the workman was engaged as a daily wages casual labourer to do the agricultural work in 1982 through contractor and his engagement was as and when required by the contractor and when work was available and the workman worked till 15-01-2000 and he had not completed 240 days of work in any year. The evidence of the witness for the party no. 1 in this regard has not at all been challenged in the cross-examination. The witness for the party no. 1 has given the number of days worked by the workman in each year chronologically in his evidence on affidavit. Such statement

of the witness is corroborated by the documents Exts. M-II to M-LVIII. In the cross-examination of the witness of party no. 1, it has been brought out that except the documents Exts. M-II to M-LVIII, there is no other document in the office of the party no.l regarding the engagement and disengagement of the workman. So, there is no question of drawing of adverse inference against party no.1 for non-production of documents as submitted by the learned advocate for the workman.

On perusal of the evidence on record, it is found that party no.1 has not been able to show that the engagement of the workman was through the contractor. However, it is clear from the evidence, both oral and documentary that the engagement of the workman by party no. 1 was on daily wages casual basis for doing agricultural work as and when required during the period from 1982 till 15-01-2000 and there was no regular appointment of the workman as a peon in 1982 and he did not work continuously from 1982 till June, 2003.

10. In view of the stands taken by the parties, the first question requires to be considered is as to whether, the party no. 1 is an industry as defined under section 2 (j) of the Act.

In this regard, I think it apropos to mention about the judgment of the Hon'ble Apex Court reported in AIR 1978 SC 548 (Bangalore Water Supply Vs. Sewerage Board). In the above judgment, the Hon'ble Apex Court have held that:-

" S. 2(j)- "Industry"- Meaning and scope of what the term includes and excludes - Tests and guidelines for such inclusion and exclusion· indicated- Charitable Institutions, Clubs, Educational Institutions, Municipalities, Research Institutes, Co-operative Societies, Establishment of Liberal profession, if industry- Agencies and departments of Governments engaged in any non-sovereign functions when deemed to be industry indicated- Complex of services- Some qualifying for exemptions and some not-Tests

"Industry" as defined in the sub-section has wide import.

Where there is (i) Systematic activity (ii) Organised by cooperation between employer and employee (the direct and substantial element is chimerical) and (iii) for the production and / or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations."

Taking into consideration the pleadings of the parties regarding the activities and functions performed by party no. 1 and applying the principles enunciated by the Hon'ble Apex Court in the judgment as mentioned above, it is found that party no. 1 is an "industry" as defined under section 2 (j) of the Act.

11. In this case, the workman has taken the stand that he worked continuously from the year 1982 till June 2003 and he had completed 240 days of work in every year. However, the party no. 1 has denied such claim and has stated that the workman was engaged on daily wages casual basis as and when required from 1982 till 15-02-2000 and he had never completed 240 days of work in any year. In view of the stands taken by the parties, I think it apt to mention about the principles enunciated by the Hon 'ble Apex Court in this regard.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

"Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25-B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/ s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1)

and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/ s. Essen Deinay Vs. Rajeev Kumar) have held that:

"Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/ claimant that he had worked for 240 days in a year preceding his termination—Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-100 (Reserve Bank of India Vs. S.Mani) have held that:—

"Industrial Disputes Act, 1947-Ss.25-F, 25-N, 25-B and II-240 days" continuous Service-Onus and burden of proof with respect to-Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service - Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days' continuous service-Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon 'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary for the workman to prove that he worked for 240 days in the preceding l2 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

12. The present case in hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination.

As already mentioned above, the workman except his own evidence on affidavit has not adduced any other evidence. It is clear from the evidence on record, both .oral and documentary as already stated above that the engagement of the workman by party no. 1 was on daily wages casual basis for doing agricultural work as and when required during the period from 1982 to 15-01-2000 and there was no regular appointment of the workman as a peon and he did not work continuously from 1982 till June 2003. It is also found that the workman has miserably failed to prove that he had completed 240 days of work in the preceding 12 months of the alleged date of his termination or in any year. Hence, the provisions of Section 2S-F r/w. Section 25-B of the Act are not applicable to the case of the workman. So, the workman is not entitled to any relief. Hence, it is ordered:-

ORDER

The action of the management of National Bureau of Plant Genetic Resources, New Delhi and Office-in-Charge, Akola of terminating the services of Shri Vasanta S/o, Sukhadeo Nimkale, R/o. Somthana, Po: Old City Akola, Teh & Dist. Akola (MS) is legal and justified. The workman is not enfitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एन बी ऑफ पी जी आर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 90/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-42012/246/2004-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/ 2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of National Bureau of Plant Genetic Resources, and their workmen, received by the Central Government on 30-10-2013.

[No. L-42012/246/2004-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/90/2005

Date: 26.09.2013

Party No. 1

The Director,
National Bureau of Plant Genetic Resources, Indian Council of Agriculture Research Pusa Camp, New Delhi.
The Officer-in-Charge,
National Bureau of Plant Genetic Resources, Regional Station, Behind 5 Godown, Shastri Road, Dr. PDKV Campus, Akola. (MS).

Party No. 2

Shri Pandurang Namdeo Mangulkar,
R/o Somthana, Po: Old City Akola,
Akola (MS).

AWARD

(Dated: 26th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of NBPGR and their workman, Shri Pandurang Namdeo Mangulkar, for adjudication, as per letter No. L- 42012/246/2004-IR (CM-I1) dated 17-11-2005, with the following schedule:—

> "Whether the action of the management of National Bureau of Plant Genetic Resources, New Delhi and Office-in-Charge, Akola of terminating the services of Shri Pandurang Namdeo Mangulkar, R/o Somthana, Po : Old City Akola, Akola, Teh. & Dist. Akola (MS) is legal and justified? If not, to what relief the disputant workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Pandurang Namdeo Mangulkar, ("the workman" in short), filed the statement of claim and the management of National Bureau of Plant Genetic Resources, Akola, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that in the year 1979, he was appointed as a Labour-cum-Chowkidar by party no. 1 and he was being paid Rs. 1800 per month and his name was sponsored by the employment exchange and initially, though he was engaged as a Labour, subsequently, he was engaged in multipurpose works, such as chowkidari at Gin Bank, Poli house and Rest house etc. and so also in agriculture work of cleaning and sowing and payment of wages was being made to him by taking his signature on revenue stamp of one rupee affixed on a register maintained by the party no.1 and his entire service record was unblemished and during his service tenure, there was no memo or any complaint against him and he was in continuous employment of party no. 1 from 1979 to June, 2003 and he had completed more than 240 days in a year and therefore, as per the provisions of law, his status had become that of a permanent workman/ employee.

The further case of the workman is that party no.1 is an industry and in 1978, party no.1 established its office at Akola and started the work of research and commercial activities by acquiring 52 acres of land from Dr. Punjabrao Krishi Vidyapeth, Akola and started Gin Bank, Poli house and Machhi Talab on various plots developed on the agricultural lands taken from the Vidyapeth and party no.1 also constructed meeting hall, rest house and technical office and for the purpose of carrying out its commercial activities, it employed various persons on permanent basis and at present, eleven permanent employees consisting of Labour-cum-Chowkidars, Technical Assistants, driver, sweeper and labourers are working with party no. 1 and party no.1 earns huge income from agriculture operations on the agricultural lands and selling agricultural products

in the market and for the purpose of doing agricultural operation, the party no.1 took his services alongwith other employees and the activities of party no.1 are totally commercial and party no.1 uses to earn profit from all these activities and therefore, the party no.1 is an industry and he was a workman.

The further case of the workman is that the party no.1 without following the provisions of law terminated his services in the month of June, 2003 and neither any notice was issued nor any enquiry was made before termination of his services and he was drawing Rs. 2010 per month at the time and as his status was that of a permanent employee, his termination from services by party no.l is totally illegal and bad in law and therefore is liable to be quashed and set aside and in reference no. CGIT/NGP/196/2000, which is quite similar to his case, it has already been held by this Tribunal that party no.1 is an industry and the termination of its employees was illegal and the same was without following the due procedure of law and his case is more or less similar in nature like that of the employees involved in reference case no. 196/2000.

The workman has prayed to declare his oral termination made by party no.1 in June, 2003 as illegal and to direct party no.1 to reinstate him in service with continuity, full back wages and all the consequential benefits .

3.In the written statement, denying the pleadings made in the statement of claim, party no.1 has pleaded inter alia that it was established by the Indian Council of Agricultural Research (ICAR), Ministry of Agriculture, Government of India, New Delhi in the year in 1976 and being a nodal organization in India, it has national mandate to plan, conduct, promote and coordinate all activities concerning plant exploration, collection, safe conservation and distribution of both indigenous and introduced genetic variability in crop plants and their wild relatives and it not only provides genetic resources to ongoing crop improvement programmes to sustain continued advances in agricultural productivity and stabilize production, but also conserves them safely to meet needs of future generations and it has no profit making motive, as none of the plants or plant produce are subjected for any sale and it has no trading activity and it is solely and primarily a research institute and for doing the agricultural work in the fields, casual labourers were engaged through contractors and it is an institution engaged in carrying out fundamental research in agriculture and therefore, not an industry as defined U/s. 2 (j) of the Act and for that the claim of the workman is liable to be dismissed.

The further case of party no.1 is that for number of years, the casual labourers recruited by the departments of the Central Government were deprived of the benefits of regularisation in service and the casual labourers were agitating and were demanding wages at par with class-IV employees of the Government, so the policy relating to engagement of casual labourers in Central Government offices was reviewed in the light of the Hon'ble Supreme Court's judgment dated 17-1-1986 in the case of Surinder Singh and Others Vs. Union of India and based on the directions of the Hon'ble Apex Court, different departments of Government of India framed suitable scheme to absorb the daily paid casual labourers and to implement those schemes and Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi issued guidelines to their Directorates and other officials throughout India, vide office memorandum no. 49.14/2/86-Estt (C) dated 07-06-1988 for review of policy on recruitment of casual workers and persons on daily wages and on the basis of the above guidelines, the Government of India, Department of Personnel and Training (DOPT), issued office memorandum no. 57016/2/90-Estt.(C) dated 10-09-1993 and further review the policy and decided that the existing guidelines contained in office memorandum dated 07-06-1988 be continued to be followed and also framed a scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" and the same was brought into force·w.e.f. 01-09-1993 and in terms of the guidelines of office memorandum dated 07-06-1988, casual labourers could be legally engaged for work which is of casual/seasonal nature and it has been following the above mentioned scheme and based on those guidelines issued directives to their institutes throughout India, for regularisation of the daily paid casual labourers engaged by them and in view of its aforesaid policy, it had directed the departments/units to engage casual labour on contract basis vide order dated 10/14-12-1999 and issued guidelines for allotment of work of various operations to the contractors and accordingly, the contract was allotted by it to one Shri R.S. Ghodpage, Nagpur and a written agreement was signed between it and the contractor on 13-01-2000, which was effective from 16-01-2000 to 15-01-2001 and in terms of the agreement, the contractor was deputing his casual labourers for doing the agricultural work, depending upon its availability and the contractor used to raise a consolidated bill, depending upon the number of casual labourers he had deputed and the said bill was being paid to him by an account payee cheque by it and as per the policy of the Government and the directions of the controlling authority, the contract was extended for a further period of one year from 01-04-2001 to 31-03-2002 and the same was again extended for a further period.

It is specifically denied by party no. 1 that the workman was appointed in 1979 and he was being paid Rs. 1800 per month and he was engaged in multipurpose works and he was in continuous service from 1979 till June, 2003 and he had completed more than 240 days in a year and had become a permanent workman as alleged. It is pleaded by the party no. 1 that the workman was for the

first time engaged as daily paid casual labourer in the farm for doing agricultural work in the year 1980 and he did not work at all in the years 1991 to 1993 and he was paid wages weekly and the workman is not entitled to any relief and in view of the judgment of the Hon'ble Apex Court as reported in (2006) 4 SCC at page 1 (Secretary, State of Karnatak and others Vs. Umadevi), the claim is not maintainable.

4. In support of his claim, the workman has examined only himself as a witness. The evidence of the workman is on affidavit. In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has stated that wages was being paid to him on signing the acquaintance roll and wages were being paid to him for the days he was engaged by party no. 1.

5. The party no. 1 has examined Mr. Abdul Nizar, the Officer-In-Charge of its Regional Station, Akola as a witness, besides placing reliance on documentary evidence, Exts. M-II to M-LV, the payment sheet-cum-attendance of the workman.

In his examination-in-chief, this witness has also reiterated the facts mentioned in the written statement. He has further stated that the workman was not engaged in the year 1979 and he did not work at all from 1991 to 1993 and for the first time, the workman was engaged as daily paid casual labour for doing agricultural work in the year 1980 and he worked up to 15-01-2000 and he was paid wages on weekly bills and he used to sign on revenue stamp and he has filed wage bills from 01-07-1984 to 15-01-2000, showing the wages paid to the workman and others. This witness had proved the wage sheets as Exts. M-II to M-LV. This witness has also stated that the workman was paid wages for the number of days he worked and wages was paid to him for 108, 174, 191, 188, 121,70, 151, 156, 66, 179, 152, 79, 156, 154, 157, 145, 141and 15 days in the year 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1994, 1995, 1996, 1997, 1998, 1999 and 2000 respectively and the workman has not worked for 240 days in any year and he worked only for the number of days as mentioned above, when work was available in the season.

In his cross-examination, this witness has stated that he has no-personal knowledge about the engagement and disengagement of the workman and the contents of his affidavit are based on the documents available in the office. This witness has also specifically stated that there is no other document in the office regarding the engagement and disengagement of the workman except Exts. M-II to M-LV. This witness has also stated in his cross-examination that casual labourers were engaged as per the requirements.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed as a Labour-cum-Chowkidar by party no.1 in the year 1979 and his name was sponsored by the employment exchange and the workman though initially worked as a Labour-cum-Chowkidar, subsequently, he was engaged by party no. 1 to do multipurpose works including agricultural operations and the workman worked continuously from 1979 to June 2003 and the workman had completed more than 240 days of work every year and thus had acquired the status of a permanent workman, but party no. 1 without compliance of the mandatory provisions of law and without giving any prior notice, illegally terminated his service in June, 2003 and as such, the termination of the workman from services is illegal and the party no. 1 did not produce the entire documents relating the engagement of the workman, which is clear from the cross- examination of the witness examined on behalf of the party no. 1 and as such, adverse inference is to be drawn against the party no. 1.

It was submitted by the learned advocate for the workman that the party no. 1 is an industry, as it earns huge income by raising different crops on the lands acquired by it and by selling the crops in the market and the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that party no. 1 is not an industry as defined under section 2 (j) of the Act, as it is an institute engaged in carrying out fundamental research in agriculture and there is no profit making motive of the institute and non of the plaints plant produce are subjected to sale.

It was further submitted by the learned advocate for the party no. 1 that the workman was engaged as daily paid casual labourer in the farm of party no. 1 in. 1980 for the first time and he did not work with the party no. 1 in 1979 and so also from 1991 to 1993 and he worked up to 15-01-2000 and he was paid his wages on weekly bills after signing on revenue stamp and he did not work for 240 days in any year and the workman has not produced a single document or any other evidence except his own evidence on affidavit to prove that he had worked continuously from 1979 to June, 2003 and that he had completed 240 days of work every year, though the initial burden was upon him to prove the same and it is clear from the evidence of the witness examined by party no. 1 and the documents, Exts. M-II to M-LV that the workman worked till 15-01-2000 and his engagement was on daily wages basis, as and when required and he did not complete 240 days work in any year and the engagement of the workman was by the contractor as per his requirement and services of the workman were not terminated by party no. 1 and the workman is not entitled to any relief.

In support of the submission, the learned advocate for the party no. 1 placed reliance on the decisions reported in (1997) 4 SCC-391 (Himanshu Kumar Vs. State of Bihar) and AIR 1997 SC-1855 (Physical Research Laboratory Vs. K.G Sharma).

8. At the outset, I think it necessary to mention that the terms of reference made by the Central Government is quite vague, as the date from which, the services of the workman were terminated by the management of party no. 1, which is quite essential for adjudication of the dispute, has not been mentioned.

The workman though has mentioned in the statement of claim that he was appointed as a Labour-cum-Chowkidar in 1979 by party no. 1 and continued to work till June, 2003, he has neither mentioned the date and month of his appointment nor the date of his termination. The workman though has mentioned in the statement of claim that his name was sponsored by the employment exchange, he has not mentioned anything as to whether his appointment was an oral appointment or by issuance of any appointment order. The workman has also not mentioned anything as to how he was appointed, that is to say as to whether such appointment was made after his appearance in any test or interview conducted by party no. 1.

It is to be mentioned here that the workman has not produced a single document in support of his claim that he was appointed as a Labour-cum- Chowkidar in 1979 and that his name was sponsored by the employment exchange and that he was engaged by party no. 1 in multipurpose works including cultivation and that he worked continuously with party no. 1 from 1979 to June, 2003 and he had completed 240 days of work every year. The workman except his own evidence on affidavit has not adduced any other evidence in support of his claim.

9. On the other hand, party no.l has claimed that the workman was engaged as a daily wages casual labourer to do the agricultural work in 1980 through contractor and his engagement was as and when required by the contractor and when work was available and he did not work at all in the years 1991 to 1993 and the workman worked till 15-01-2000 and he had not completed 240 days of work in any year. The evidence of the witness for the party no.1 in this regard has not at all been challenged in the cross-examination. The witness for the party no.1 has given the number of days worked by the workman in each year chronologically in his evidence on affidavit. Such statement of the witness is corroborated by the documents Exts. M-II to M-LV. In the cross-examination of the witness of party no.1, it has been brought out that except the documents Exts. M-II to M-LV, there is no other document in the office of the party no.1 regarding the engagement and disengagement of the workman. So, there is no question of drawing of adverse inference against party no.1 for non-production of documents as submitted by the learned advocate for the workman.

On perusal of the evidence on record, it is found that party no.1 has not been able to show that the engagement of the workman was through the contractor. However, it is clear from the evidence, both oral and documentary that the engagement of the workman by party no. 1 was on daily wages casual basis for doing agricultural work as and when required during the period from 1980 till 15-01-2000 and there was no regular appointment of the workman as a Labour-Cum-Chowkidar in 1979 and he did not work continuously from 1979 till June, 2003.

10. In view of the stands taken by the parties, the first question requires to be considered is as to whether, the party no.1 is an industry as defined under section 2 (j) of the Act.

In this regard, I think it apropos to mention about the judgment of the Hon ’ble Seven Judges Bench of the Hon'ble Apex Court reported in AIR 1978 SC 548 (Bangalore Water Supply Vs. Sewerage Board). In the above judgment, the Hon'ble Apex Court have held that:—

“ S.2(j)- “Industry”- Meaning and scope of what the term includes and excludes - Tests and guidelines for such inclusion and exclusion indicated- Charitable Institutions, Clubs, Educational Institutions, Municipalities, Research Institutes, Co-operative Societies, Establishment of Liberal profession, if industry- Agencies and departments of Governments engaged in any non-sovereign functions when deemed to be industry indicated- Complex of services- Some qualifying for exemptions and some not-Tests

“Industry” as defined in the sub-section has wide import.

Where there is (i) Systematic activity (ii) Organised by cooperation between employer and employee (the direct and substantial element is chimerical) and (iii) for the production and/or distribution of goods and services calculated to- satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations.”

Taking into consideration the pleadings of the parties regarding the activities and functions performed by party no.1 and applying the principles enunciated by the Hon’ble Apex Court in the judgment as mentioned above, it is found that party no.1 is an “industry” as defined under section 2(j) of the Act.

11. In this case, the workman has taken the stand that he worked continuously from the year 1979 till June 2003 and he had completed 240 days of work in every year. However, the party no.1 has denied such claim and has stated that the workman was engaged on daily wages casual basis as and when required from 1980 till 15-02-2000 and he had never completed 240 days of work in any year. In view of the stands taken by the parties, I think it apt to

mention about the principles enunciated by the Hon'ble Apex Court in this regard.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:- "Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) have held that:

"Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/ claimant that he had worked for 240 days in a year preceding his termination—Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-l00 (Reserve Bank of India Vs. S.Mani) have held that:—

"Industrial Disputes Act, 1947-Ss.25-F, 25-N,25-B and II-240 days' continuous Service-Onus and burden of proof with respect to-Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) If sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service - Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days' continuous service-Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their- plea of abandonment of service. Filing of an arfidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary for the workman to prove that he worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

12. The present case in hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding termination.

As already mentioned above, the workman except his own evidence on affidavit has not adduced any other evidence. It is clear from the evidence on record, both oral

and documentary as already stated above that the engagement of the workman by party no. 1 was on daily wages casual basis for doing agricultural work as and when required during the period from 1980 to 15-01-2000 and there was no regular appointment of the workman as a Labour-cum-Chowkidar and he did not work continuously from 1980 till June 2003. It is also found that the workman has miserably failed to prove that he had completed 240 days of work in the preceding 12 months of the alleged date of his termination or in any year. Hence, the provisions of section 25-F r/w section 25-B of the Act are not applicable to the case of the workman. So, the workman is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management of National Bureau of Plant Genetic Resources, New Delhi and Office-in-Charge, Akola of terminating the services of Shri Pandurang Namdeo Mangulkar, r/o. Somthana, Po: Old City Akola, Teh & Dist. Akola (MS) is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स वेस्ट्र्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 251/ 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22012/594/1999-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 251/ 2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of WCL and their workman, received by the Central Government on 30-10-2013.

[No. L-22012/594/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/251/2000 Date: 4-10-2013

Party No. 1 : The Sub Area Manager,
Western Coalfields Ltd., PO : Pipla,
Distt. Nagpur.

Party No. 2 : The Secretary,
Lalzanda Coal Mines Mazdoor Union,
Qtr. No.7, Block-7, Chankapur Colony,
PO : Silewara, Tah. Saoner, Distt. Nagpur.

AWARD

(Dated: 4th October, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Namdeo Ramaji, for adjudication, as per letter No.L-22012/594/99-IR (CM-II) dated 27-07-2000, with the following schedule:—

"Whether the action of the management of Western Coalfields Ltd., through Sub-Area Manager, Pipla Sub Area,PO: Pipla, Tah. Saoner, -Distt. Nagpur in not correcting the date of Birth i.e. 12-04-1947 of Shri Namdeo Ramaji, Pipla Mines, Pipla Sub-Area Tah: Saoner, Distt. Nagpur is justified? If not, to what relief the said workman is entitled? What other directions are necessary in the matter?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lalzanda Coal Mines Mazdoor Union," ("the union" in short) filed the statement of claim on behalf of the workman, Shri Namdeo Ramaji, ("the workman" in short), and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was initially appointed as a general mazdoor Cat.I in the year 1982- at Damua Colliery, Kanhan Area and at the time of his appointment at Damua Colliery, the workman had submitted his date of birth as 12-04-1947 and in support of the same, he had submitted the copy of his school leaving certificate and in the year 1986, the workman was transferred to Nandan Washery of Kanhan Area from Damua Colliery and in the year 1992, vide order no. 174 dated 24-01-1992, he was again transferred to Patansaongi Colliery and he continued to work at Patansawangi Colliery till 1998 and while working as such, he was informed by the Manager, Patansawangi Colliery vide letter no.WCL/PSA/CM/PTN/ Supper Annuation/98/ 59 dated 01-01-1998 that he was going to be superannuated on attaining the age of 60 years w.e.f. 01-07-1998 and in the said letter, his date of birth as recorded in the records of the management of Patansaongi Colliery was not mentioned and the workman was surprised and mentally upset on receipt of the said letter and the workman was sure that he would be superannuated in April, 2007, as per his date of birth recorded at Damua Colliery as

12-04-1947, on the basis of the school leaving certificate and so also at Nandan Washery, to where he was transferred from Damua Colliery and being aggrieved by the action of the management of Patansawangi Colliery, the workman raised the dispute before the ALC (Central), Nagpur through it (the union) and as the conciliation failed, the ALC submitted the failure report to the Central Government vide letter dated 01-12-1999.

It is further pleaded by the union that Forrn-B register is a statutory record and it is to be maintained at each Colliery under the provisions of the Mines Rules, 1955 and entries in the Forrn-B register are to be made at the time of initial appointment and then to carry forward the same to other Colliery/unit where the workman uses to be transferred and as the workman was initially appointed at Damua Colliery and subsequently he was transferred to Nandan Washery and then to Patansawangi Colliery, as per law, the entries made in Form-B register at Damua Colliery should have been carried forward to Nandan Washery and then to Patansawangi Colliery, but the same was not done by party no. 1 with malafide intention and the management representative, Shri R.K. Sharma, Deputy Personnel Manager was unable to produce the Form-B registers maintained at Damua Colliery and Nandan washery before the Conciliation Officer and letter dated 09-02-1997 was addressed by the Head clerk, Nandan washery to Dy. Personnel Manager, Damua Colliery and letter dated 16-02-1997 was given by senior P.O., Damua Colliery to Dy. Personnel Manager, Nandan Washery mentioning therein that there was no entry of date of birth of the workman in the Form-B Register of Damua Colliery, even though at that relevant time, the workman was working at Patansawangi Colliery and such correspondence must had been made between Nandan washery and Damua Colliery for the reason that in 1997, the management of Patansawangi Colliery might have asked the Nandan Washery and Damua Colliery about the date of birth of the workman and as the management of Patansawangi did not get the reply of their choice/liking, on their own accord, they entered the date of birth of the workman as 01-07-38 arbitrarily and it is clear from the letter no. 22/97/11/8 dated 5/6-02-1997 of the Labour Officer, Patansawangi Colliery written to the senior Personnel Officer, Damua Colliery / Nandan Washery asking them about the correct age of the workman that till February, 1997, the management of Patansawangi Colliery had not entered any date of birth of the workman in the Form-B register and date of birth of the workman recorded as 01-07-1938 by the management of Patansawangi Colliery was only as a result of unfair labour practice and malafide intention and the management had deliberately not abided in complying the provisions of Implementation Instruction no. 76, issued.

The union had prayed for the reinstatement of the workman in service with continuity from the date of wrongful superannuation, i.e. 01-07-1998, full back wages and consequential benefits.

At this juncture, it is necessary to mention that during the pendency of the reference, the workman expired, so his legal heirs, namely, Smt. Panchfulla (the widow), Rajendra, Anil and Sunil (the three sons) were added as parties in the case as per order dated 02-08-2008 and the legal heirs by way of amendment made prayer to grant them monetary benefits from the date of premature retirement of the deceased workman till his death i.e. up to 08-09-2007.

3. The party no. 1 in the written statement has admitted the appointment of the workman at Damua Colliery in 1982 and his transfer to Nandan washery and then to Patansawangi Colliery in the year 1986 and 1992 respectively and that the Manager, Patansawangi Colliery by letter dated 01-01-1998, informed the workman that he would be superannuated w.e.f. 01-07-1998. However, party no. 1 has denied that at the time of appointment at Damua Colliery in 1982, the workman had submitted his date of birth as 12-04-1947 and he had also submitted his school leaving certificate. It is further pleaded by the party no. 1 that it is its established policy that six months notice of superannuation is served on the concerned workman and in the Form-B register of Patansawangi Colliery, the date of birth of the workman was recorded as 01-07 -1938 and the workman accepted the same and the workman was due to complete his 60 years of age on 01-07-1998, so notice of superannuation was given to the workman in the month of January, 1998 and there was no question of the workman becoming shocked, surprised or mentally upset on receipt of the aforesaid letter and the workman was fully aware that his date of birth was registered with it as 01-07-1938 and the date of birth of the workman was not recorded as 12-04-1947 at Damua Colliery or Nandan Washery and the date of birth of the workman was recorded correctly and the same was forwarded to each Colliery as and when the workman was transferred and the letters written by the Head clerk Nandan washery dated 09-02-1997 and the senior P. O. Damua Colliery dated 16-02-1997 were inter departmental correspondence between Nandan Washery and Damua Colliery and Patansawangi Colliery had nothing to do with the same and neither the said letters were addressed to the workman nor copy of the same was sent to him, so custody of the said letters is extremely surprising and doubtful and therefore, the workman is bound to disclose the source of getting those documents and as the workman has not approached the court with clean hands, the reference is liable to be answered in negative. Party no. 1 has denied the pleadings made in the statement of claim that as no reply was received by the management of Patansawangi Colliery from Damua and Nandan Washery of choice/liking of the Patansawangi, the management of Patansawangi mine or their own recorded the date of birth of the workman as 01-07-1938 arbitrarily

and that his date of birth was not recorded in the Form-B register of Patansawangi Mine till the end of February, 1997.

The specific plea of party no. 1 is that in the year 1987, all its employees were given an opportunity to verify their date of birth recorded with it and accordingly, the workman also verified his date of birth in 1987 and he did not raise any objection and as such, he is estopped to raise the dispute in regard to his date of birth and the dispute is hit by delay and latches and the workman raised the alleged dispute at the fag end of his service and it is established principle of law that any dispute in relation to change of date of birth at the fag end of service cannot be entertained and as the reference is devoid of any merit, the same is liable to be answered in the negative.

4. Both the parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence. On behalf of the legal heirs of the deceased workman, Anil Namdeo, one of the sons of the deceased workman has been examined as a witness. One Narendra Krishna Joshi, Manager, Patansawangi Mine has been examined as a witness by party no. 1.

The examination-in-chief of the witness, Anil is on affidavit. In his examination-in-chief, this witness has stated that his father, Namdeo was appointed as a general mazdoor cat.I on 01-07 -1979 at Damua Colliery and at the time of his appointment, his father had submitted the copy of his school leaving certificate in the office of the management of party no. 1, where in, his date of birth was mentioned as 12-04-1947. This witness has further stated that on the basis of the wrong recording of the date of birth of his father in the service records at Patansawangi Mines as 01-07 -1938, instead of the correct date of birth as 12-04-1947, his father was superannuated on 30-06-1998, prematurely nine years earlier instead of the actual date of retirement i.e. 12-04-2007. The rest of the examination-in-chief of this witness is reiteration of the facts mentioned in the statement of claim.

In his cross-examination, this witness has again stated that his father was appointed at Damua Colliery on 01-07-1979 and he has no idea about the documents filed by his father.

5. The evidence of the witness, Narendra Krishna Joshi for the party no. 1 is also on affidavit. The examination-in-chief of this witness is in the same line of the stands taken by the party no. 1 in the written statement.

In his cross-examination, this witness has stated that he has no personal knowledge about the case and the contents of his affidavit are based on the documents available with the WCL. He has further stated that as there is no document in the office of WCL regarding submission of the date of birth of the deceased workman as 12-04-1947, he has mentioned in his affidavit that the workman had not submitted his date of birth as 12-04-1947 and as per records, the workman had not submitted any school leaving certificate at the time of his appointment and he cannot say if according to the school leaving certificate" the date of birth of the deaceased workman was 12-04-1947. This witness has admitted that in the Form-B register of the workman received at Patansawangi Colliery, his date of birth was not mentioned and the Form-B register of an employee must contains his date of birth and there is a specific column for the same and he cannot say in which Colliery, the date of birth of the workman was mentioned for the first time in the Form-B register. The witness for the party no.1 has further admitted that prior to 1970, a combined register of Form-B of the employees was being maintained containing single line entry, in respect of each employee and the copy of the Form-B register filed by the management shows that the date of birth and the date of appointment of the workman have been written in a different ink than the other entries made therein. This witness has also stated that as per implementation Instruction no. 76, Ext. W-II, no correction of the date of birth of the workman was done and he cannot say as to why, the correction of the date of birth of the workman was not done as per the Implementation Instruction no. 76. This witness has denied the suggestions given in his cross-examination that management wrongly recorded the date of birth of the deceased workman as 01-07-1938 and that the workman was superannuated nine year prior to his real date of superannuation.

6. During the course of argument, it was submitted by the learned advocate for the petitioner that the workman had submitted his school leaving certificate, wherein his date of birth was recorded as 12-04-1947, at the time of his initial joining at Damua Colliery and in 1986, the workman was transferred from Damua to Nandan washery and in 1992, he was again transferred from Nandan Washery to Patansawangi Colliery and while serving at Patansawangi Colliery, the workman was served with the notice of his superannuation w.e.f. 01-07-1998 on his attaining the age of 60 years and under the provisions of the Mines Rules, 1955, each Colliery is required to maintain the record of every employee in Form-B register and entries in Forrn-B register are to be entered at the time of the initial appointment and the same is to be carried forward to other collieries/units to where the concerned employee is being transferred and in view of such provisions, it was obligatory on the party of the party no.1 to carry forward the entries in Form-B register of the workman from Damua Colliery to Nandan Washery and from Nandan Washery to Patansawangi Colliery and in Patansawangi Colliery, the date of birth of the workman in Form-B register was wrongly recorded as 01-07-1938 instead of 12-04-1947 and in the said register, Ext. M-II, the date of birth and date of appointment have been mentioned in a different ink than the other entries made in the same and party no. 1 has also

failed to produce the Form-B register of the workman maintained in Damua Colliery and Nandan Washery and the letter written by the Head clerk, Nandan Washery on 08-05-1997 informing that the date of birth of the workman was not mentioned in the LPC, at the time of his transfer in 1986 and to supply the same, shows that the date of birth of the workman was not mentioned in the Form-B register and such fact also finds support from the letter dated 16-02-1997 of the Senior Administrative Officer, Damua Colliery to Dy. Personnel Manager, Nandan Washery and the correspondence made between the, collieries clearly show that the date of birth of the workman as mentioned in the Form-B register at Patansawangi was quite imaginary and a wrong date of birth of the workman was mentioned and even though, the workman raised the dispute in regard to his date of birth prior to the date of his superannuation, his case was not sent to the age determination committee to settle the dispute about his age and party no. 1 deliberately did not implement the Implementation Instruction no. 76 issued under NCWA-III and though the workman had demanded for production of ten documents by party no.l, by filing an application on 30.10.2001, party no.1 failed to produce those documents, so adverse inference is to be drawn against the party no. 1.

It was further submitted that in this case, the evidence of the workman has gone unchallenged as no cross-examination was made and as such, it is necessary to direct the party no. 1 to reinstate the workman notionally with continuity and to pay the wages from the date of the premature superannuation of the workman till his death, to his legal heirs.

7. Per contra, it was submitted by the learned advocate for the party no.1 that the workman did not submit any school leaving certificate at the time of his initial joining in service and the date of birth of the workman was correctly recorded as 01-07-1938 as per the say of the workman and the workman was fully aware that his date of birth was recorded by party no.1 as 0l- 07-1938 and the date of birth of the workman was not recorded by the management of Patansawangi Mine on their own and in the year 1987, all the employees of party no. 1 were given opportunity to verify their date of birth recorded with the management and the workman also verified his date of birth and he did not raise any objection and as such, he is estopped from raising the dispute and the present dispute is hit by delay and latches and the dispute was raised by the workman at the fag end of his service and it is established principle of law that any dispute in relation of change of date of birth at the fag end of service cannot be entertained and during the pendency of the proceeding, the workman expired and his cross-examination could not be made and the reference is devoid of any merit and is required to be answered in the negative.

In support of the contentions, reliance. has been placed by the learned advocate for the party no.1 on the decisions reported in 1997 (5) SCC-181 (State of Orissa Vs. Ramanath Patnaik) and the judgments of the Hon'ble High Court, Nagpur Bench in W.P. No. 1619/2008 (Ekbal Ahmad Vs. Chief General Manager), W.P. 891/2010 (Ship Prasad Vs. WCL and another) and 1178/2010 (Sheshwanti Premdas Vs. WCL).

So, keeping in view the principles enunciated by the Hon'ble Courts in the judgments mentioned above, the present case in hand is to be considered.

8. It is to be mentioned here that on 17-06-2002, as none appeared on behalf of the party no.1 to cross examine the workman, order to close the cross-examination of the workman was passed. The party no.1 approached the Hon 'ble High Court, Nagpur Bench, Nagpur by filing writ petition no. 3255/2003 for redress against the order passed by the Tribunal on 22-01-2003 rejecting their applications for permission to cross-examine the workman and for filing documents. The Hon'ble High Court, by order dated 01-10-2004 were pleased to quash and set aside the order dated 27-01-2003 and to allow the party no.1 to produce the documents and to cross-examine the workman. After receipt of the order of the Hon'ble High Court, on 06-03-2006, in presence of the learned advocates for both the parties, order was passed by this Tribunal for the cross-examination of the workman fixing the case to 30-03-2006. On 30-03-2006, as the learned advocate for the party no.1 did not appear to cross-examine the workman, the case was adjourned to 02-05-2006. Then the case suffered several adjournments for different reasons and lastly, on 22-03-2007, the cross-examination of the workman was declined, as nobody appeared on behalf of the party no.1 to cross-examine the workman. The order passed on 22-03-2007 was before the death of the workman. It is not the case that due to the death of the workman, he could not be cross-examined. So, the submission made by the learned advocate for the party no.1 that due to the death of the workman, he could not be cross-examined, fails. It is found that the evidence of the workman has remained unchallenged.

9. On perusal of the pleadings of the parties, the evidence adduced, both oral and documentary and taking into consideration of the submissions made by the learned advocates for both the parties, it is found that the workman had claimed his date of birth as 12-04-1947, basing on the school leaving certificate issued by "Janpad Prathamik Shala", Karaghat Kamptee. It was pleaded by the deceased workman that in the Form-B registers maintained in Damua Colliery and Nandan Washery, his date of birth was not mentioned and at Patansawangi Colliery in the Form-B register, his date of birth was mentioned as 01-07-1938 according to the sweet will of the management of Patansawangi Colliery and such recording of his date of birth as 01-07-1938 was without any basis and due to such illegal recording of his date of birth, he was retired from service prematurely on 01-07-1998, i.e. nine years prior of the real date of his superannuation. It was also claimed by

the workman that he was under the believe that he would be retired in April, 2007 and for the first time, he came to know about such wrong recording,when he received the notice issued by the management dated 10-01-1998 that he would be retired from service on superannuation w.e.f. 01-07-1998.

The plea of the party no. 1 is that the date of birth of the workman was correctly recorded in the Form-B register at Damua colliery as 01-07-1938, as per the say of the workman and the workman did not submit any school leaving certificate at the time of his initial appointment and the date of birth of the workman as recorded in the Form-B register at Damua colliery was forwarded to each colliery as and when the workman was transferred from one place to another and the workman was fully aware that his date of birth was recorded as 01-07-1938 and he had acknowledged the same by signing the Form-B register and the date of birth of the workman was not recorded arbitrarily as 01-07-1938 by the management of Patansawangi colliery.

10. So far the oral evidence of the workman is concerned, it is to be mentioned that he reiterated the facts mentioned in the statement of claim in his evidence.

According to the statement of claim and the evidence of the workman, the workman was initially appointed at Damua colliery in the year 1982. However, Anil, the son of the deceased workman in his examination-in-chief itself has stated that the workman was appointed at Damua colliery on 01.-07 -1979, which is contradictory than the evidence of the workman and so also the stand taken in the statement of claim. Further, witness Anil in the cross-examination has stated that he does not have any idea about the documents filed by his father. So, the evidence of Anil is of no avail to the petitioners to decide the issue in question.

Even though, the workman in the statement of claim and in his evidence had stated about submission of the school leaving certificate at the time of his initial joining of duty at Damua colliery, he did not produce the original school leaving certificate or an authentic copy of the same in support of such claim. Such certificate was also not proved by the workman in his evidence as per law. The workman had filed a Xerox copy of a school leaving certificate as "annexure-B" alongwith the statement of claim: As the provisions of the Evidence Act are not strictly applicable to industrial disputes and in the interest of natural justice, I think it proper to take the Xerox copy of the certificate produced (annexure-B) by the workman to take into consideration. On perusal of the said Xerox copy of the certificate annexure-B, it is found that it is not at all possible to know from the same about the date of birth of the deceased workman, the date of issue of the same or in which class he was reading at the time of issuance of the same. So, annexure- B is of no help to show that according to the school leaving certificate, the date of birth of the workman is 12-04-1947. No other document has been produced either by the union or the deceased workman or the present applicants (legal heirs of the deceased workman) in support of the claim that the date of birth of the workman is 12.04.1947.

11. The next question raised by the learned advocate for the applicants is that party no. 1 did not comply with Implementation Instruction no.76 in respect of the workman. Party no. 1 has taken the stand that in 1987, opportunity was given to the workman in relation to correction of date of birth, if any and the workman did not arise any objection regarding any mistake in recording of his date of birth.

Except the copy of the Implementation Instruction no. 76 (Ext. W-II) neither of the parties has filed any other document in respect of the workman in that regard.

On perusal of Ext. W-II, it is found that, paragraph (B) sub-clause (i) (a) of annexure-I attached to Ext. W-II provides the procedure for review/determination of date of birth in respect of the existing employees and under the said paragraph, it is provided that, "In the case of the existing employees Matriculation certificate or Higher Secondary Certificate issued by the recognized universities or Board or Middle Pass certificate issued by the Board of Education and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said universities (Board) Institutions prior to the date of employment."

It is to be mentioned here that in clause (5) of Ext. W-II, it has been specifically mentioned that "undisputed cases will not be reopened." Likewise para (B), Sub-clause (ii) provides that, "Wherever there is no variation on records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. Management after being satisfied on the merit of the case will take appropriate action for correction through the age determination committee / Medical Board."

In this case, it was never the case that there was any variation on records of party no. 1 in regard to his date of birth. There is also no material on record to show that after issuance of Implementation Instruction no. 76, the workman brought to the notice of party no. 1 of having a very glaring and apparent wrong entry in regard to his date of birth, so as to send him by party no. 1 to the age determination committee/Medical Board for determination of his age. No evidence has been produced by the union to show that any objection was raised by the workman in respect of wrong recording of his date of birth by party no. 1. Hence, there was no question of sending the deceased workman to the age determination committee by party no.l.

12. In this case, party no. 1 has not produced the Form-B registers of Damua colliery and Nandan washery in respect of the deceased workman. It is not disputed that an application was filed by the learned advocate for the

union on 30-10-2001 for directing the party no. 1 to produce certain documents as mentioned in the said application including the Forrn-B registers of the workman of Damua colliery, Nandan Washery and Patansawangi colliery. However, on verification, it is found that no order was passed by the Tribunal directoring the party no. 1 to produce the documents. When no order was passed directing the party no. 1 to produce the documents, no adverse inference can be drawn against the party no. 1 for non production of the documents.

13. In this case, the Forrn-B register maintained in respect of the workman of Patansawangi colliery has been produced and marked as Ext. M-II. In Ext. M-II, the date of birth of the workman has been recorded as 01-07-1938, both in figure and in words.

It was argued by the learned advocate for the workman that the witness examiried on behalf of the party no. 1 has admitted that the date of birth and date of joining in service of the workman in Ext. M-II have been written in a different ink than the other entries made in the same and the above fact coupled with the correspondence made between the collieries as mentioned in the statement of claim, it is clear that the date of birth of the workman was mentioned by the management of Patansawangi colliery wrongly as 01-07-1938 according to their own accord and without any basis, after February, 1997

In the statement of claim, there is no pleading as to whether any Forrn-B register was maintained in respect of the workman at Damua colliery and Nandan Washery or not. There is no pleading in the statement of claim that though such Forrn-B registers were maintained at Damua colliery and Nandan washery and the signatures of the workman were taken on the same, the date of birth of the workman was not mentioned in the same. According to the statement of claim and evidence of the workman, the workman came to know about the wrong recording of date of birth only after receipt of the notice of superannuation dated 10-01-1998 and he was shocked to know the date of superannuation to be 01-07-1998. However, the said statement in the statement of claim seems not to be true, in view of the evidence of the workman himself and his representation dated 28-08-1997, about which, the workman has referred in paragraph 4 of his affidavit. On perusal of the copy of the representation dated 28-08-1997 filed by the workman, it is found that before filing of the representation dated 28-08-1997, he already knew that his date of birth was recorded as 01-07-1938 in the Form-B register.

It is not disputed that not only the date of birth of the workman, but also, the date of joining of the workman in service have been written in a different ink in Ext. W-II. It is not the case of the workman that the date of joining has also not been recorded correctly. As the date of birth and the date of joining in service of the workman have been written in a different ink, it cannot be said that the date of birth of the workman was recorded after February, 1997 by the management of Patansawangi colliery arbitrarily. The workman had not only signed on Ext. M-II, but had also put his LTI on the same. It is not pleaded on behalf of the workman that the signature and LTI of the workman were taken on Ext. M-II, without mentioning the date of birth and date of joining. Hence, it cannot be said that the date of birth of the workman as mentioned in Ext. M-II is not correct or that a wrong date of birth has been mentioned.

In view of the discussions made above and also applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the party no. 1 to the case in hand, it is found that party no. 1 correctly refused to correct the date of birth of the workman. Hence, it is ordered:—

ORDER

The action of the management of Werstern Coalfields Ltd., through Sub- Area Manager, Pipla Sub Area, PO: Pipla, Tah. Saoner, Distt. Nagpur in not correcting the date of Birth i.e. 12.04.1947 of Shri Namdeo Ramaji, Pipla Mines, Pipla Sub-Area Tah: Saoner, Distt. Nagpur is justified.As the deceased workman was not entitled to any relief, his legal heirs are also not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 1/ 2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22013/1/2013-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/ 2011) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of Singareni Collieries Company Limited, and their workman, received by the Central Government on 30-10-2013.

[No. L-22013/1/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

5th the day of July, 2013

Present: 1. Sri Y. Reddappa Reddy, Chair Person.
2. Sri B. G. Ravinder Reddy, Member
3. Sri Niranjan Rao, Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. of 2007/ LCID 1/2011

PLAC No. 4/2013

(On the file of CGIT-cum-Labour Court at Hyderabad)

Between:

S. Rama Suray

S/o Sri Rajan ..... Petitioner

And

The Chairman and M. D.

SCCL. Hyderabad and other .... Respondents

This case is coming up before the Lok Adalat on ..... for settlement in the presence of the applicant appearing in person/ represented by his counsel Sri G. Vidya Sar and the Respondent too, being present in person/ represented by his counsel, Sri PV V S Sharma on a persual of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. Act 1987

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

(a) The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board

(b) Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling wherever coal filling is available and need not be the same place where the workmen was last employed.

(c) The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.

(d) Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.

(e) All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filer afresh wherever coal filling is available.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd./-

Signature of Applicant(s)

Sd./-

Signature of Respondent(s)

Sd./-

Signature of Counsel for Applicant(s)

Sd./-

Signature of Counsel for Respondent(s)

Signature of Presiding Officer & Members of the Bench

1. Sd./- 2. Sd./- 3. Sd./-

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LS.A. Act, 1987.

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 107/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22013/1/2013-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October , 2013

S.O. 2392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 107/ 2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Limited, and their workman, received by the Central Government on 30-10-2013.

[No. L-22013/1/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of industrial disputes relating to CGIT-cum-Labour at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

Friday the 5th day of July, Two Thousand and Thirteen

Present : 1. Sri Y. Reddapp Reddy, Chairman

2. Sri Niranjan Rao Member

3. B.G. Ravindra Reddy Member

In the matter of case No. LCID No. 107/07 PLAC No. 3/2013

On the file of CGIT-cum-Labour Court at Hyderabad

Between

Adupu Ramesh

S/o. A. Laxmaiah R/o. Godavari Kani,

Karimnagar District. ....Petitioner

AND

1. Singareni Collieries Ltd. rep. by Managing Director, Kothagudee Khaee Dir.

2. Chief General Manager, Ramagudam Karim Nagar Distt.

3. Colliery Manager, Singareni Colliries Ltd. GDIC 3 INCLING

....Respondents

This case is being coming up before the Lok Adalat on 05-07-2013 for settlement in the presence of the applicant appearing in person/represented by his counsel V. Govind for P. Venkat Rao Advocate and representatives the Respondents too, being present in person/ represented by his counslel, Sri PAWS Sarma, Advocate, on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side line Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

(a) The Respondents agreed to reappoint the Petitioner as Badli Filler.

(b) The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Colliery Medical Officer.

(c) Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling where coal filling is available and need not be the same place where the workmen was last employed.

(d) The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.

(e) Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.

(f) All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID 107/07is disposed of accordingly. The respondent management shall take the petitioner back to duty as Badli Coal Filler forthwith.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-

Signature of Applicant(s)

Sd/-

Signature of Respondent(s)

Sd/

Signature of Counsel for Applicant(s)

Sd/

Signature of Counsel for Respondent(s)

Signature of Chairman and Members of the Bench

1. Sd/- 2. Sd/- 3. Sd/-

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA Act, 1987.

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 132/

2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22013/1/2013-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Limited, and their workmen, received by the Central Government on 30-10-2013.

[No. L-22013/1/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of industrial disputes relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

Friday the 7th day of June, Two Thousand and Thirteen

PRESENT : 1. Smt. M. Vijaya Lakshmi : Chairman/ Presiding Officer

2. Sri C.Niranjan Rao : Member

In the matter of case No. LCID No. 132/2007 PLAC 1/2013

(On the file of CGIT-cum-Labour Court at Hyderabad)

Between:

M. Sathaiah, EC 2815320, S/o Poshaiah,

C/o Smt. A. Sarojana, Advocate, Flat No. G-7,

Rajeshwari Gayatri Sadan,

Kachiguda, Hyderabad ....Petitioner

AND

1. The Singareni Collieries Company Ltd.,
   Rep by its General Manager, Srirampur (P) Area
   Adilabad District
2. The Superintendent of Mines,
   Chennur-2 Incline, M/s. Singareni Collieries Company Ltd.,
   Srirampur, Adilabad District .... Respondents

This case being coming up before the Lok Adalat on 07-06-2013 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy, Advocate and representatives of the Respondents too, being present in person/represented by his counsel, Sri P A VVS Sarma, Advocate, on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

(a) The Respondents agreed to reappoint the Petitioner as Badli Filler.

(b) The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Colliery Medical Officer.

(c) Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling where coal filling is available and need not be the same place where the workmen was last employed.

(d) The petitioner workman agrees for observation of one year with mnumum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.

(e) Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.

(f) All other usual terms and conditions of appointment will be applicable 1.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management shall take the petitioner back to duty as Badli Coal Filler forthwith.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-

Signature of Applicant(s)

Sd/-

Signature of Respondent(s)

Sd/-

Signature of Counsel for Applicant(s)

Sd/-

Signature of Counsel for Respondent(s)

Signature of Chairman and Members of the Bench

1. Sd/ 2. Sd/

Note: This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA Act, 1987.

नई दिल्ली, 30 अक्तूबर, 2013

का.आ. 2394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 54/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2013 को प्राप्त हुआ था ।

[सं. एल-22013/1/2013-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 30th October, 2013

S.O. 2394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2010) of the Central Government Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Limited, and their workmen, received by the Central Government on 30-10-2013.

[No. L- 22013/1/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad under Section 20 of the Legal Services Authorities Act, 1987)
The 5th day of July, Two thousand and Thirteen

Present :

1. Sri Y. Reddappa Reddy :
2. Sri B. G. Ravinder Reddy : Member
3. Sri C. Niranjan Rao : Member

(Constitued U/s 19 of the ISA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22-8-2006)

In the matter of case No. LCID No. 54 of 2010
PLAC No. 2/2013
(On the file of CGIT-cum-Labour Court at Hyderabad)

Between :

Abdul Qayum
S/o Sattar
E.No. 2072 207
R/o Adilabad Dist ...Petitioner

And

The Singareni Colleries Company Ltd.,
Rep. by its General Manager
Goleti No. 1 Incline.
Bellampalli ...Respondents

This case is coming up before the Lok Adalat on for settlement in the presence of the applicant appearing in person/represented by his counsel Sri M. Govind and the Respondent too, being present in person/represented by his counsel, Sri Pavrs Sharma on a perusal of the case record, after considering and hearing the case of both sides and with the consent of both side, the Lok Adalat has arrived at the following settlement and delivered the following:

AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987

The following contents of the proposals of the Management are read over and explained to the petitioner in his language and having understood the same, the petitioner agreed for the said proposals and put his thumb impression /signature on this Award voluntarily by signing this Award .

(a) The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness.

(b) Petitioner workman agrees to the appointment as Badli Coal Filler afresh.

(c) The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month, by reviewing once in every three months, In the event of any shortfall of attendance during the 3 months, during the observation period, his services will be terminated without any further notice and enquiry.

(d) Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease/ill-health, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.

(e) All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/-

Signature of Applicant(s)

Sd/-

Signature of Respondent (s)

Sd/-

Signature of Counsel for Applicant (s)

Sd/-

Signature of Counsel for Respondent (s)

Signature of Presiding Officer & Members of the Bench

1. Sd/-

2. Sd/-

3. Sd/-

Note : This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of L.S.A. ACT 1987.

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1, धनबाद के पंचाट (संदर्भ संख्या 19/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था।

[सं. एल-20012/250/1993-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/1995) of the Central Government Industrial Tribunal/ Labour Court No. 1, Dhanbad, as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 8-11-2013.

[No. L-20012/250/1993-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1) DHANBAD

IN THE MATIER OF A REFERENCE U/s 10(1) (D) (2A) OF I.D. ACT, 1947.

Ref. No. 19 of 1995

Employers in relation to the management of C.M.P. D.I.L, Ranchi

AND

Their workmen.

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers. : None

For the workman. : None

State :-Jharkhand. Industry:-Coal.

Dated. 13-9-2013

AWARD

By Order No.L-20012/250/93 -IR -(C-I), dtd.02-02-1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of M/s. Central Mine Planning &. Design Institute Ltd. Ranch is justified is terminating the services of S/Shri Bablu Khalkho, Kiran Chandra Dey, Arunangshu Choudhary, Bijay Tigga, Sahdeo sao, Jitendra Kumar Singh, Ratan Sarkar, Sunil Kumar, Santosh Kumar Singh, Chandra Bhushan Prasad Sahu and Bimal Kumar Singh w.e.f. 18-6-92 , 18-6-92, 20-6-92, 18-6-92, 18-6-92, 18-6-92, 18-6-92, 20-6-92, 18-6-92 18-6-92 & 18.6.92 respectively? If not, to what relief these workmen are entitled to?"

2. After receipt of the reference, both parties are noticed, they submitted their claim statement , rejoinder and document. The parties appearing for certain dates and thereafter none appears from either side. Therefore it felt that there is not dispute between the parties. Hence "No Dispute" award is passed, communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, धनबाद के पंचाट (संदर्भ संख्या 95/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था।

[सं. एल-20012/595/2000-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2001) of the Central Government Industrial Tribunal/ Labour Court No. 2, Dhanbad, as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 8-11-2013.

[No. L-20012/595/2000-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act., 1947

REFERENCE NO. 95 OF 2001.

PARTIES:

The Area Secretary,
Bihar Colliery Karmgar Union,E.J.Area,Bhowra,
Dhanbad Vs. Project Officer,
Bhowra (S) Colliery of BCCL,Bhowra,Dhanbad

APPEARANCES :

On behalf of the workman/Union : Mr. P.K.Ghoshal, Ld.Advocate

On behalf of the Management : Mr. D.K.Verma, Ld.Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 07th May, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/595/2000-IR(C-I) dtd. 22/26-3-2001.

SCHEDULE

"Whether the action of the management of M/s. BCCL in dismissing Sh.Yusuf Mia from service w.e.f. 17-1-1998 is justified? If not, to what relief is the workman entitled?"

2. The case of the workman Yusuf Mia as stated in the written statement filed by Sri S.N.Goswami,the Ld.Advocate,Authorised by the Area Secretary, Bihar Colliery Kamgar Union,Bhowra,Dhanbad is that the workman was a permanent employee of the Bhowra (S) Colliery of E.J. Area of M/s. BCCL working as Miner. Loader bearing Per. No. 02345478. He was initially appointed at Bhagatdih Colliery, and transferred to Bhowra (S) Colliery as per the Office Order No. Ref. P.S./B.H./(P)/97/22/797 dtd.6-6-1997. He though had to report and join his duty on 7-6-1997 at his new place of posting, but he could not do due to sudden illness beyond control, and he returned his residence and underwent treatment at his native place from 8-6-1997 to 12-10-1997 ; and meanwhile he was too grieved over the death of his brother to inform the management .At recovery from his ailment ,when the workman submitted his Medical Certificate to the Personnel Manager, Bhowra (S) Colliery on 12-10-1997 for resumption of his duty, he was disallowed to join his duty. The management conducted the departmental enquiry through Sri R. J. Singh appointed as enquiry Officer, into the chargesheet. The Enquiry Officer issued the Notice of Enquiry as per the letter dtd.27-10-1997 to the workman for his participation in the enquiry fixed on 28-10-1997. But the mode of the domestic enquiry by the Enquiry Officer was unfair, improper and against the principle of natural justice in lack of opportunity to him for his defence .The Management as per the Note Sheet under Ref.No.PS/BH/(S)/97/25/2064 dtd.28-11-1997 as opined by the Project Officer allowed the chargesheeted workman to resume his duty after placing him in Badli List; but the workman was dismissed from his service as per the Dismissal Letter Ref. No. PS/BH(S)/98/ 23/114 dtd.17-1-1998 of the Project Officer,the said colliery who was neither the Appoint Authority nor the Disciplinary Authority to dismiss him. So the dismissal Order was vague, arbitrary and illegal as per the Certified Standing Orders & Mines Act as well as the principal of natural justice, as the copy of the enquiry proceeding was not supplied of the workman prior to his dismissal. The action of the management in dismissing the workman from service for his alleged absentism is higher than the gravity of the alleged misconduct, depriving him of his living from employment, so it is unjustified, as it is shockingly disproportionate.

3. Accordingly, in the rejoinder filed by the Learned Advocate authorized by the Union concerned for the workman categorically denying the allegations of the O.P./ Management, it has been alleged that consequent upon his transfer from Bhagatdih Colliery (East) under Kustore Area -VII of the M/s. BCCL where he was initially appointed to Bhowra (S) Colliery under Area-XI more than 20 Kms. away where to join his duty on 7-6-1997 without transport facility, but due to his sickness and death of his brother, could not join his duty. The enquiry is liable to be vitiated as fictitious.

4. Whereas the contra pleaded case of the O.P./ Management with specific denials is that workman Yusuf Mia was though a permanent M/Loader of Bhowra (5) Colliery. Yet his absence from duty from 7-6-1997 without leave and sufficient cause was misconduct under the Certified Standing Orders of the Company. So he was issued the charge sheet dtd.13-10-1997, to which he submitted his reply was not found satisfactory. Hence the Enquiry Officer was appointed as per the Order dtd. 22-10-199. Notice of enquiry was issued to the workman, intimating him the date, time and place of the enquiry and the workman received it.

The departmental enquiry was conducted as per the notice wherein workman was present, fully participating therein, and he was given adequate opportunity for his defence as per the principle of natural justice. The Enquiry Officer has submitted his enquiry report, holding the charge fully proved against him undoubtedly.The Disciplinary authority had served the copy of the enquiry report as per the letter dtd. 09-01-1998. After going through and considering the Enquiry proceeding, Enquiry Report, the Disciplinary Authority agreed with the findings of the Enquiry Officer, also took into account of the past attendance of the workman for 65 and 60 days in the 1995 and 1996 respectively, and then it was decided to dismiss him from his service; hence he was dismissed from service w.e.f. 17-1-1998. It is also alleged the written statement submitted on behalf of the workman was not verified by the party to the dispute, so it is liable to be rejected. Thus, the action of the management of M/s. BCCL as mentioned in the Scheduled to the Reference is justified and legal.

FINDING WITH REASONS

5. In course of hearing /evidence of the workman at the preliminary point, the Learned Advocate S.N.Goswami for the Union concerned by the petition dtd. 30-07-2012 under the signatures of the workman and the Learned Counsel has accepted the domestic enquiry as fair, and accordingly all the enquiry proceedings and relevant papers were marked as Ext.M.1 to M.6 (on formal proof waived) and the Tribunal as per the Order No. 31 dtd. 30-7-2012 held the domestic enquiry as fair and proper and in accordance with the principle of natural justice.

Thereafter, the reference directly came up for hearing a final argument on merits as to the point of dismissal as punishment to the workman for his misconduct of absentism under Sec.ll A of the Industrial Dispute Act.1947.

It is a submitted on behalf of the workman, Yusuf Mia was a permanent M/Loader as initially appointed, but he was dismissed for unauthorized absentism from 8-6-1997 to 12-10-1997, though his medical certificate was also filed by him in the Enquiry. Thus it is requested for resumption of his duty. Whereas Mr. D.K.Verma, Ld.Counsel for the O.P./management has submitted that the very statement of the workman reveals his admission of his unauthorized absentism; moreover his past conduct was not fair,so it is alleged his dismissal as justified.

On perusal and consideration of the materials available on the case record, I find the facts as under:

(i) It is indisputable that the workman was a permanent M/Loader of the Management.

(ii) He had accepted his absentism from his duty for the relevant period.

(iii) But he was awarded dismissal punishment for his aforesaid absentism,prior to which no second Show Cause was issued to him by the O.P./ management. It is contrary of the principle of the natural justice.

On consideration of the materials available on the case record, I find and hold that dismissal punishment to the workman for his absentism with immediate effect as the letter dtd.17-1-1998(Ext.M.7) appears to be harsh and disproportionate to the nature of his unprecedent misconduct, so it is unjustified. The workman deserves a relief under Sec. 11 A of the Industrial Act, 1947.

Therefore, it is, hereby, in the term of the Reference:

ORDERED

The Award be and the same is passed that the action of the Management of M/s. BCCL in dismissing of Shri Yusuf Mia from service w.e.f., 17-1-1998 is legally unjustified. Hence, the workman is entitled to his re-instatement in his service but without back wages.

Let the copies of one soft and one hard of the Award be sent to the Ministry of Labour & Employment, Government of India, New Delhi, for information and publication in the Gazette of the India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1, धनबाद के पंचाट (संदर्भ संख्या 48/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था।

[सं. एल-20012/441/1998-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/1999) of the Central Government Industrial Tribunal/ Labour Court No. 1, Dhanbad, as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 08-11-2013.

[No. L-20012/441/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947.

Ref. No. 48 of 1999

Employers in relation to the management of Bhowra (S) Colliery of M/S. B.C.C.L.

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

APPEARANCES :

For the Employers. : None

For the workman. : None

State : Jharkhand.

Industry: Coal

Dated. 30-9-2013

AWARD

By Order No.L-20012/441/98-IR(C-I), dated 17-04-99, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bhowra (5) Colliery of M/s. BCCL, in not allowing Sri A.K. Mukherjee, cap lamp cleaner after coming out of the jail custody w.e.f. 14-05-90 to 06-12-95 in connection with the suicide of his wife is justified? If not, to what relief the workman is entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears subsequently, case remain pending, It is felt that the dispute between the parties have been resolved in the meantime. Hence "No dispute" award is passed communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 13/2007, 14/2007 एवं 15/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था।

[सं. एल-20012/80/2006-आई आर (सीएम-I),

सं. एल-20012/87/2006-आई आर (सीएम-I),

सं. एल-20012/86/2006-आई आर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2007, 14/2007, 15/2007) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad, as shown in the Annexure in the Industrial Dispute between the management of M/s. CCL and their workman, received by the Central Government on 08-11-2013.

[No. L-20012/80/2006-IR (C-I),

No. L-20012/87/2006-IR (C-I),

No. L-20012/86/2006-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer.

In the matter of Industrial Dispute under Section 10(1)(d) of the I.D.Act., 1947

REFERENCE No . 13 of 2007

PARTIES:

Employers in relation to the management of Ashok Project, Piparwar Area of M/s. CCL, Bachra, Distt. Chatra, Jharkhand and for worker Mahadev Mahato and 17 others.

[Ministry's order No. L-20012/80/06-IR(CM-I) dated 07-03-2007]

WITH

REFERENCE No. 14 of 2007

PARTIES:

Employers in relation to the same management for worker for Gopal Mahato and 17 others.

[Ministry's Order No.L-20012/87/06-IR(CM-I) dated 15-03-2007]

WITH

REFERENCE No. 15 of 2007

PARTIES:

Employers in relation to the same management for worker for Bigan Mahato and 1 6 others.

[Ministry's Order No. L-20012/86/06-IR(CM-I) dated 15-03-2007]

APPEARANCES :

On behalf of the workman : Mr. K.Chakrabotry Ld.Advocate

On behalf of the Management : Mr. D.K.Verma, Ld.Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 15th March, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act.,1947 has referred the following disputes to this Tribunal for adjudication vide their Order Nos. referred the foregoing para as per the following schedules :

SCHEDULE OF REF. NO. 13 OF 2007

"Whether the demand of the Janta Mazdoor Sangh from the management of Ashok Piparwar Area of M/s. CCL for regularization of Shri Mahadeo Mahato & 17 others (as per list) is justified and legal? If so, to what reliefs are the concerned workmen entitled & from what date ?"

SCHEDULE OF REF. NO. 14 OF 2007

"Whether the demand of the Janta Mazdoor Sangh from the management of Ashok Piparwar Area of M/s. CCL for regularization of Shri Gapal Mahato & 17 others (as per list) is justified and legal? If so, to what reliefs are the concerned workmen entitled & from what date ?."

SCHEDULE OF REF. NO. 15 OF 2007

"Whether the demand of the Janta Mazdoor Sangh from the management of Ashok Piparwar Area of M/s. CCL for regularization of Shri Bigan Mahato & 16 others (as per list) is justified and legal? If so,to what reliefs are the concerned workmen entitled & from what date ?"

2. Since the cause of industrial dispute being the same for regularisation of all the workmen concerned between them and the same Opp./Management so the Ref. Cases No. 14/2007 and 15/2007 have been amalgamated with the present Ref. case No.13/2007 as per order dt.14-6-11 of the Tribunal in it for adjudication which shall be binding upon both the parties in respect of the claim of the petitioner- Sangh for regularisation of the workmen concerned.

3. All the three cases of the same sponsoring union for the workmen Mahadeo Mahato with 17 others, Gopal Mahato with 17 others and Bigan Mahato with 16 others respectively, are replica of each of their cases concerned. All the concerned workmen as per their respective lists (enclosed with their concerned cases) are alleged to have been performing the job related to dumping of coal at R.C.M.Siding and loading of coal on the wagons for the last twelve years directly under the control and supervision of the management.The entire coal of Ashoka Project is transported through R.C.M.Siding to different destinations for different customers after sorting the coal out of its impurities such as stone, earth and 'Jhama' etc.Their job also includes guidance the dumper operator for proper dumping of coal at right place, levelling of coal on the wagon and cleaning the railway lines. All the implements for executing the job are being supplied by the management. The aforesaid job of loading and transporting is continuous and permanent in nature. The management is paying them their wage @ Rs.48000 per day through intermediaries much below the rate - prescribed in NCWA.When the management unconsidered their several representations for their status as employees of it, the union raised the industrial dispute before the A.L.C.(C), Ranchi where the plea of no employer-employee relationship existence was pleaded by the management. But its failure in reconciliation resulted in the reference for adjudication. The attendance register of the workmen also bears the signature of the management's official, though the management is camouflaging the real

relationship as employees of the management. Thus the demand of the Union for the regularisation of all the workmen of all their three cases is justified and legal.

4. The rejoinders of the Union for the workmen in Ref. Cases Nos. 14 & 15 of the year 2007 are same and similar, with specific denials that the employer-employee relationship exists between both the management and the workmen, i.e.,Gopal Mahato and 17 others.The provisions of Articles 14 and 16 do not give right to the management to exploit the poor workmen by camouflaging the real issue.

5. Whereas the case of the Opp/Management is that the presons concerned were never engaged nor paid any wage by the management of CCL for any work at R.C.M. Siding of Ashok Project. M/s. CCL being a Government company registered under the companies Act is a sta te as meant under Article 14 of the Indian Constitution. It is duty bound of CCL to observe the mandatory provision of 14 & 16 of the Constitution of India.The Government company has formulated the recruitment process for appointment of workmen in accordance with the aforesaid provisions of the Indian Constitution. No body can claim employment in M/s. CCL in violation of the said constitutional provisions. Factually the job as they have claimed is thoroughly done by mechanised means, but not by mannual means. No employer-employee relationship exists between the management of Ashok Piperwar Area of M/s. CCL and Gopal Mahato and 17 others or Bigan Mahato and 16 others. The Union enrolled the names of job seekers, and raised an industrial dispute for introducing them in the employment of public sector undertaking through litigation.

The management by categorical denials has pleaded in its rejoinder that transporting, entire dispatching and loading of coal is being done thoroughly by mechanised means, but not by manual means. The persons concerned never performed any kind of job under the central and supervision of the management.

FINDING WITH REASONING.

6. In the main Reference case with the Ref. Cases No. 14 & 15/2007,WWI Bigan Mahato for the Union and MWI Shravan Kumar, the Manager (Mining) of Ashok Project, for the management have been examined.

WWI Bigan Mahato, one of the workmen, for all the workmen including himself of their reference cases has stated to have been working at R.C.M. Siding of Ashok Project for the last 15 years by performing the job of picking out stones from the dumped coal, loading of coal by the Pay Loader into the wagons, levelling the loaded coal on the wagons, and cleaning of the Railway lines of it. The work is regular and of perennial in nature.The management provides them the tools, such as Belchas for the job under the supervision of the management. Though they are paid by the management their wages, yet not in accordance with the NCWA.The photocopies of Attendance Register of the workmen of RCM Siding under signature of Mr. A.K. Jha,superintendent of Mines of Ashok project, produced and proved as Extt.W.1 and W.1/1 by him (WW1) . He claimed the workmen having been appointed by aforesaid Shri A. K. Jha, but he could not recall the year of their appointment.The witness has clearly admitted that they were given neither any appointment letter nor I.D.Card (Identity card) for the job nor pay slip for wages nor any written order for cleaning outside the project or for levelling the coal on the wagons. Likewise the the witness remained silent over whether any written order was given to them for picking up the stones from the dumped coal. Filing of aforesaid documents (Photocopies) after fabrication has been denied by the witness.

So far as the photocopies of the alleged Attendance Registers (Extt.W.1 and W.1/1) which the witness (WWI) has got f'rom their leader, are concerned, none of them are so, rather the photo copy of the former Register Form G with written 'Attendance Register' for 1eave Account during the calender year which is for the period from 7th Jan. to 28th April, 2001 related to monthwise but shiftwise noted their working days such as 4/12 etc. Likewise is the Attendance Register written on the "Pilot Guard Register" for the period from 9th December, 2001 to 27th April, 2002, simllarly maintained as the former one for the working days of the alleged workmer, but not regularly always.

7. Whereas as per the statement of MWI Shravan Kumar, the Manager (Mining) at Ashok project, sternly refuting the engagement of any contractor for loading the coal on the railway wagon or the engagement of any worker through a contractor for the same, has asserted the mechanically loading of the coal products with the help of pay loader Machine at the RCM siding of the Ashok Project, for which they have the pay loader machine from contractor or owner of the machine ; since the management has not directly engaged the labourers, the demand of the Union for their regularisation is unjustified. In fact the coal is transported by the contractors and other contractors as well as transporting contractors load the coal on the wagons at RCMS situated at about 10 Kms. away from the Project.This is the Open Cast Mine where the product of coal is produced through blasting and coal is cut by surface Miners, the Machines cutting the coal on the surface. Shell Pickers pick up shell from the coal. The witness knows Mr. A. K. Jha, the Superintendent of Mines who has been transferred from the project.

8. Mr. D. Mukherjee,the Learned Advocate for the Union as per his written argument has to submit that the management in para 11 of its written statement in the first sentence "that the person concerned have to be working in RCM Siding."

Firstly, by connoting the first sentence in para 11 of the management's written statement - "The persons concerned have to be working in RCM Siding", Mr. D. Mukherjee, the Ld. Counsel for the Union has meant for the concerned workman have been working in RCM Siding.But his such plea being shallow is unsustainable in view of the adverse pleading specific denial of the management in its written statement with rejoinder.

Secondly, the plea of Mr.Mukherjee, the Ld.Counsel for the Union is that an adverse inference is drawable for intentional witholding towards the management which neither submitted nor explained about the documents called for as per the petition dt. 20-4-11 of the workmen (filed in the Ref No. 14/2007 only) whereas WWI Bigan Mahato had proved the Extt.1 and 1/1 (the photo copies of the Attendance Registers). At the point of time, the workmen pleading is vague as for 12 years as in their evidence (of WWl) for 15 years devoid of their specific period of service. Likewise the Management in its pleading as also in it evidence of MWI has aftirmed the unengagement of the workmen by it at any time. An adverse inference runs not on vague terms, but on specific facts ot a case. So the atoresaid plea of the Ld. Counsel for the workmen prima facie seems baseless no the ratio decidendi of the authority: 2012 (132) FLRS 7 Jhar. H.C. (DB) Employers, Management of Balihari Colliery, Putkee Area of BCCL, Dhanbad Vs. the Br. Secretary, RCMS, Dbanbad, applies to it.

Thirdly, the emphatic submission of Mr. Mukherjee, the Advocate for the Union, is that the Management in written statement admitted contractors are engaged for transporting coal from Ashok Project to RCM Railway Siding and the same loaded in Railway wagon mechanically through contractor, but it did not corroborate its pleading, so pleading is no substitute for proof. The plea ot the Ld. Counsel for the Union is palpably untenable, as the pleadings of the management in any or these three References have not at all any whisper about the engagement of contractors for transporting coal etc.

9. Last1y, Mr.Mukherjee submits that the workmen as the employees of the management being beyond dispute as per their Attendance Registers (Extt.W. 1 and 1/1) have been working who are entitled to regularisation of their service under the management. He has cited the following rulings by their photocopies with other documents as under :

(I) 2002 LLR 449(SC) M/s Indian Farmers Ferti1izer Corp. Vs. Industria1 Tribuna1-1, Allahabad & others,wherein workmen were engaged direct1y by the Appellant; but 1ater on to evade the legality arising under the law stated to show their employment as mazdoor employed through a contract and such entries are fake.

Held : On due appreciation of evidence the finding of Tribunals that they are the employees of the Appellant is inassailable.

(II) 2008 AIR SCW 3996 : GM, ONGC, Shilchar Vs. ONGC contractual Union case: The appellant, the ONGC was engaged in the exploration for oil and natural gas.ln 1997, the ONGC started its drilling operation in the districts of Coachar, and for that purpose, engaged a large number of staff in various fields, initially through contractors. These employees of the Appellants through tneir Union raise an industrial dispute for the regu1arisation of their service.

Held : Award of Tribunal hoiding workers to be employee of principal employer and granting relief of regularisation is not outside to jurisdiction even if wording of reference showing was as to regularisation of contractual workers compared to pleadings related to the core issue of status of worker as employee of principal employer (Paras 16,18)

(III) 2011 LLR 1079 (SC) (DB), Bhilwara Dugdh Utpadak Sahakari S. Ltd. vs. Vinor Kumar Sharma Dead by LRs & Ors .

The award of the Labour Court holding the concerned workmen were the employees of the Appellant/employer but not of the contractort's was upheld by the High Cout and the Hon'ble Apex Court as well. But photocopy of the Order dt.18-11-2009 of Hon'ble Apex Court passed in Civil Appeal No. 3962 of 2006 Bihar Colliery Kamgar Union Vs. Employer, the management of Balihari Colliery of BCCL & others -- filed incomplete and illegible.

(IV) 2012 LLR 248 (Jharkhand H.C.)(SB) Usha Martin Industries Ltd, Ranchi

Vs.

Presiding Officer, Labour Court, Ranchi and Another.

In the case, the Hon'ble High Court Ranchi upheld the award for reinstatement to a workman, as there had been direct relationship of employer and the terminated workman in lack of any proof of Registration Certificate or any Licence u/s 7(2) and 12 of the Contract Labour (Regulation & Abolition) Act 1970 concering Ushal Ishmal Division for management.(Para 11-13) .

Photocopies of Award dt.18-08-93 by Sri T. P. Singh, then Presiding Officer, CGIT-LC(No. 1) Dhanbad passed in

Ref. Case No. 156/99, of the order dt.19-2-99 of Hon'ble High Court, Patna in the Civil writ Jurisdiction Case No. 7/1998 (R), of the order dt.12-8-99 of Hon'ble High Court, Patna at Ranchi Bench in LPA No.83/1999 (R), illegible. Order dt. 9-3-2010 of Hon'ble Supreme Court of India passed in Civil Appeal No. 8526/2002 with A.No. 8525 & 6651/2003 -related to reinstatement of workmen after being satisfied about their proper identity.

10. Challenging the photocopies of the alleged Attendance Registers (Extt.W.1 & 1/1) as fabricated, so having no evidentiary value, Mr. D.K.Verma,the Ld.Counsel for the Management has to contend that in the face of the admission of the WWI Bigan Mahato one of the alleged workmen for all, having got neither any appointment letter nor identity card nor any authority letter for their alleged work the fact of the management that they were never engaged by it, and accordingly no relationship of employer and employees between the management and the persons concerned stands affirmed. Further it is submitted no his behalf that the contractor workers are not entitled for regularisation in the services of principal employer reported in Lab.I.C.2001 at page 3656.

The Hon'ble Supreme Court in the case of state of Karnataka Vs. Uma Devi, 2006 SCC (L &S) 753 held that absorption, regularisation or permanent continuance of temporary, contractual, casual,dailywage or adhoc employee appointed/ recruited dehors the constitutional scheme of public employment on issuance of directions by Court, therefore - Held issuance of such directions amount to creating mode of public appointment which is not permissible,and that the Hon'ble Apex Court again upheld in the case of Official Liquidator Vs. Dayanand and others, 2009 SCC (L&S) W.J. at page 943 that the judgement of Supreme Court in Uma Devi Case has a binding effect to all Court and Tribunals and regularisation of temporary contractual, casual, daily wage and adhoc employee are not entitled for regularisation. Besides, Mr. Verma, the Ld. Advocate for the management emphatically submits that the Hon'ble Supreme Court in view of the law laid down in Uma Devi Case held that recruitment could not be made contrary to statutory requirement rules and in violation of Article 14 & 16, so the claim for regularisation on the basis of engagement as daily rated casual labourers is not maintainable as cited & submitted by Mr. Verma, Ld.Counsel for the management.

11. On due appreciation of the pleading based evidences of both the parties, I find the following facts :

(I) On lifting the veil of camouflage it is discernable the relationship of employee and employee existent between the workmen and the management but for a short time temporarily.

(II) In course of the employment of the workmen concerned it stands clear that they were casually employed for their work at the Railway Siding of the management for the period of 146 and 104 days in the years of 2001 and 2002 respectively, though out of the aforesaid working days sometime two days or at times not all workmen worked on 26th January, 2002 just as on 16th Feb., 2002 and the likewise.

Under these circumstances, it is held that none of the workmen concerned in their respective cases appears to have worked for 240 days in any calender year noted above which is the prerequisite to their regularisation under Sec.25 B Sub.Sec. 2(a)(II) of the Industrial Dispute Act,1947 in view of the nature of their aforesaid job. ln result,the reference is responded as such :

The demand of Janta Mazdoor Sangh from the management of Ashok Piparwar Area of M/s CCL for regularisation of Shri Mahadeo Mahato & 17 others, of Shri Gopal Mahato and 17 others and of Shri Bigan Mahato & 16 others (as per their respective Lists) is totally unjustified and illegal. Therefore the concerned workmen are not entitled to any relief from any date.

KISHORI RAM, Presiding Officer

REF. NO. 13/2007

L-20012/80/2006-IR(C-I)

List of workmen

1. Sri Mahadeo Mahto
2. Sri Jaleshar Mahto
3. Sri Jogan Mahto
4. Sri Santosh Mahto
5. Sri Tulsi Mahto
6. Sri Budhram Mahto
7. Sri Dhrju Mahto
8. Sri Sahadeo Mahto
9. Sri Dashrath Mahto
10. Sri Lalka Mahto
11. Sri Chaman Mahto
12. Sri Sohrai Mahto
13 Sri Thakur Mahto
14. Sri Dilu Mahto
I5. Sri Ramprasad Mahto
16. Sri Budhuwa Mahto

17. Sri Pachala Mahto
18. Sri Shibu Mahto

REF. NO. 14/2007

L-20012/87/2006-IR(C-I)

List of workmen

1. Sri Gopal Mahto
2. Sri Madho Mahto
3. Sri Hulash Mahto
4. Sri Ram Chandar Mahto
5. Sri Dhirju Mahto
6. Sri Lalku Mahto
7. Sri Mitku Mahto
8. Sri Bishnath Mahto
9. Sri Hari Lal Mahto
10. Sri Fuleshar Mahto
11. Sri Baleshar Mahto, No. 1
12. Sri Baleshar Mahto, No. 2
13. Sri Manoj Mahto
14. Sri Lalit Mahto
15. Sri Budhan Mahto
16. Sri Raman Mahto
17. Sri Komla Mahto
18. Sri Kartik Mahto

REF. NO. 15/2007

L-20012/86/2006-IR(C-I)

List of workmen

1. Sri Bigan Mahto
2. Sri Thurka Mahto
3. Sri Ghani Nath Mahto
4. Sri Gorakh Mahto
5. Sri Nandlal Mahto
6. Sri Madho Mahto
7. Sri Dhuska Mahto
8. Sri Kunjal Mahto
9. Sri Kaila Mahto
10. Sri Puran Mahto
11. Sri Kishun Mahto
12. Sri Aklu Mahto
13. Sri Lakho Singh
14. Sri Dhumesh Mahto
15. Sri Dhaneshar Mahto
16. Sri Sahadeo Mahto
17. Sri Kajru Mahto

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, धनबाद के पंचाट (संदर्भ संख्या 155/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था।

[सं. एल-20012/208/2000-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 155/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad, as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 08-11-2013.

[No. L-22012/208/2000-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT
SHRI KISHORI RAM, Presiding Officer.

In the matter of Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 155 OF 2000

PARTIES:

The Area President,
Rastriya Colliery Mazdoor Sangh,
P. B. Area, Kusunda,
Dhanbad

Vs

General Manager,
P.B. Area of M/s. BCCL,
Dhanbad

APPEARANCES :

On behalf of the workman : Mr. N.G.. Arun,
Union Representative

On behalf of the Management : Mr. D. K.Verma,
Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 24th June, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.l0(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/208/2000(C-I) dt.18-10-2000.

SCHEDULE

"Whether the demand of the Union for regularization of Sri Jagdish Prasad Mahato, Category-II Mazdoor to the post of Cap Lamp Issue Clerk is proper and justified? If not to what relief is the concerned workman is entitled and from what date?"

2. The case of workman Jagdish Prasad Mahato as sponsored by the Rastriya Colliery Mazdoor Sang is that the workman a permanent employee of Bhagatdih Colliery was earlier working as a Time Rated Mazdoor, in Cat.II. But as per the office order No. LAB/684 dt. 5-6-92 of the Dy. C.M.E./agent of the Colliery with the approval of the General Manager, PB Area as communicated by the letter No. F-ESI/Placement/92 of the Dy. C.M.E., the management employed and allowed to work as Cap Lamp Issue Clerk in Clerk Gr. III in exigency in 1992 ; since then he has been continuously performing the said work from May,1992 by putting in more than 240 days of attendance in a year ,yet he is being paid the wages of Cat. II without payment of differences of wages. The Certified Standing Order of the Company defines a permanent employee as one where performance of a job of permanent nature for a period of six months or more. Even a Badli worker ceases to be Badli worker when he performs a particular job for 240 days in a year even if the original worker returns. As such the workman deserves to be regularized as Cap Lamp Issue Clerk in Grade II since his working so.

3. Shorn of unscrupulous facts stated on the rejoinder, the Union in its rejoinder appears to has categorically denied the allegations of the O.P./ Management, and stated that deployment or promotion of clerk upto special grade is within the power of the General Manager, who is much competent to deploy a workman on any post in exigency, as he has the delegated power from the Board. It is the norms of the Company that if the workman completed 190 or 240 days in underground or on the surface, in a particular job, he becomes entitled to regularization in that job. As per the verdict of the Hon'ble Apex Court, if workers have been deployed to do the certain job for a long spell of time - two-three years, the employer should evolve a scheme for their regularization in that post, irrespective of any qualifications bar. The Art.12 of the Constitution does not confer upon the state any power to deprive any citizen of his legitimate right.

4. Whereas the contra pleaded case of the O,P./ Management is that due to non-appearance of the parties on 29th April and 7th August,2002,the case was closed, and a no dispute award was accordingly passed by the Tribunal; thereafter no notice for any purpose was received by the Management, hence it was not required for it for any further steps in the matter. Suddenly on receipt of the letter bearing Reference No. 155/2000/995 dt. 29-4-2005 from the Tribunal about the passing of an award in the reference, the management filed a petition before the Tribunal to recall the Exparte Award, but it was rejected by the Tribunal. Thereafter, the Writ petition No. 600/2006 preferred by the Management was allowed by the Hon'ble Court, Jharkhand , Ranch after hearing setting aside the Award as per its order dt. 6-12-2010, and remanding the case to the Tribunal for hearing. During the pendency of the Writ application, the Management as per its Office Order under Ref.No. PBA/PER/IR/2007/1479 dt.25/27-8-2007 regularized the workman as Cap Lamp Issue Clerk Gr. III considering his primefacie qualification. The workman was originally appointed as Time rated Mazdoor, and subsequently by passage of time, was placed in Cat.II Mazdoor at Bhagabandh Colliery.

5. Further is alleged by the O.P./Management that a workman working as Time rated Mazdoor as the present

workman cannot be allowed to be promoted in ex-cadre post in the clerical post in the clerical cadre ; such change of cadre is only permissible upon the orders passed by the Competent Authority. the Director (Personnel). So workman Jagdish Prasad,the Time rated Mazdoor, merely on his account of his being allowed to work in an ex-cadre post, as it amounts to change in cadre. Neither of the Certified Standing Order, the N.C.W.A. and the cadre scheme provides for regularization to a workman on the post he was temporarily deployed for. The BCCL is a Government Company registered under the Company Act, and is a state within the meaning of Article 14 of the Constitution of Indians, so it cannot regularize a workman in a particular post in violation of the Art. 14 & 16 of the Constitution, as the Joint Bipartite Committee for the Coal Ministry (JBCCI) was constituted by the Government of India, Ministry of Coal, consisted of the representatives' of the Management and the Central Trade Union .None of the Management and the Union can violate the Cadre Scheme and implementation Instruction formulated and issued by and issued by the JBCCI. So the demand of the union for regularization of the workman in the post of Cap Lamp Issue clerk with retrospective date is neither legal nor justified.

FINDING WITH REASONS

6. In the instant reference, WWI Jagdish Prasad Mahato, the workman himself for the Union and MWI Rajesh Kumar Kar, the Personnel Executive of the said Colliery for the O.P./Management have been examined retrospectively.

The statement of WWI Jagdish Pd. Mahato, the workman himself, discloses that he was,in fact, appointed as the General Mazdoor under Land Loser Scheme at Bhagabandh Colliery in the year 1990 but as per to office orders (dt. 26-5-92 and 5-6-92 - Ext.W1 and 1/1 respectively),he was allowed to work as C.L. (Cap Lamp) lssue Clerk, and accordingly, he was addressed as Cap Lamp Issue Clerk as per his chargesheet dt. l0-6-94, the Office Orders 17-6-94 and 25-2-95 and another chargesheet dt.24-6-96 (Ext. W.2 to W. 5 respectively)as also evident from the photocopies of his Attendance Register concerned (Ext. W.7 series), he claimed for regularization as Cap Lamp Issue Clerk as per his five representations (Ext. W.6 series).But there is no dispute as admitted by the workman that he was not interviewed before his purely temporary posting as the Cap Lamp Issue Clerk as per letter of the Management, for which he was not selected, as it is the selection post, and that in the year 2007, he has been regularized as the clerk

7. Likewise the statement of MWI Rajesh Kr. Kar, the Perosnnel Executive of the said Colliery, vividly depicts that the post of the clerk comes under the Cadre Scheme starting from the post of clerk. Grade III for which the qualified Mazdoors are selected but not the General Mazdoor or Cat. II Time Rated Mazdoor . It also reveals the workman was promoted to Cat.ll Mazdoor, and his selection to the post of Clerk Grade III in the year 2006-07 against the vacancies as per the Man Power Budget of the year he has been working accordingly since 27-8-2007, so the demand of the workman for his regularization as the Cap Lamp Issue Clerk from the year 1992 is not at all justified, he had not requisite qualification of three years experience of service in the year 1994 except his Matriculation.

8. Mr N.G. Arun,the Ld.Advocate-cum-Union Representative for the workman submits that since the workman has been still working as Cap Lamp Issue Clerk upto 2008 on the basis of the aforesaid authorization in the same status as per the Attendance Register,he deserves his regularization since his status has been recognized. But such submission of Mr.Arun the Learned Advocate for the workman appears to be baseless and unpersuasive because of his clear admission that the post of Cap Lamp Issue Clerk is a cadre post which permits the selection of qualified Mazdoors,but the workman had no requisite qualification for it in the year 1992, so he had no right to direct entry in the Cadre post at the relevant time as also argued by Mr. D. K.Verma,the Ld. Counsel for the O.P./Management who has also emphatically contended that mere authorization confers no right upon the workman to claim for the post of Cadre Scheme.

9. On appreciation of the materials in the case record, I find and hold that an authorization to work as Cap Lamp Issue Clerk purely temporary can not be a legal basis for the post of cadre scheme, unless & until qualified for it , when the workman got qualified and selected for, he was regularized for the post w.e.f. 27-8-2007 as per the Cadre Scheme.

Under the circumstances, in response to the Reference, is hereby

ORDERED

The Award be and the same is passed that the demand of the Union concerned for regularization of Sri Jagdish Prasad Mahato, Caty. III Mazdoor to the post of Cap Lamp Issue Clerk for implied period concerned is neither proper nor legally justified. So the workman concerned is not entitled to any relief from any date alleged impliedly.

KISHORI RAM, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 150/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था ।

[सं. एल-20012/209/2000-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 150/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 8-11-2013.

[No. L-20012/209/2000-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (I)(d) of the l. D. Act, 1947.

REFERENCE NO 150 OF 2000.

Parties : Area Secretary,
Block II, Janta Shramik Sangh, Baghmara Dhanbad
Vs General Manager, Block II Area of M/s. BCCL,
Nawagarh, Dhanbad

APPEARANCES:

On behalf of the workman/Union : Mr. D. Mukhrjee, Ld. Advocate

On behalf of the Management : Mr. D.K. Verma , Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 11th Sept., 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/209/2000(C-I) dt. 25.10.2000 .

SCHEDULE

"Whether the action of the management of BCCL,Block II Area in demoting Shri Faudi Yadav from the post of Bill Clerk to the post of Clerk Gr. III w.e.f. 7.9.1999 on grounds of misappropriation is just & proper? If not, to what relief is the workman entitled?"

2. The case of the sponsoring union Janta Shramik Sangh for workman Faudi Yadav is that he had been unblemishedly working as a permanent Bill clerk at Jamunia O.C. P. since long, but the local management biased against him for trade union activity with the union motivatedly victimized him by issuing a false and frivolous chargesheet dt. 8th june, 1999 based on the alleged complain of the General Manager.Allgedly payment of his monthly wages Rs.3680/- for April,1999 to one Adari Baurin instead of her entitled Rs.3,772, resulting in shortage of cash Rs.2,119 was the allegation against the workman. In reply to the chargesheet,the workman had specifically stated the payment of Rs.3,772 to her as verifiable from herself, but the excess payment to the some workmen due to his inadvertence or mistake. In spite of it, the management got the invalid enquiry conducted by the enquiry Officer in violation of the natural justice, as he was not given full opportunity. Smt. Adari Bouri had also appeared in the invalid enquiry, and stated to have received Rs. 3,777 from the workman , but the complainant General Manager did not appear in it. Though the charge was not proved against him, even then the management illegally and arbitrarily inflicted him the punishment of demotion from the post of clerical grade to that of clerical grade III,which was too harsh and disproportionate to the misconduct .He was not given the copy of the enquiry proceeding .The Union raised the industrial dispute before the A.L.C., Dhanbad,but the failure in its conciliation due to adamant attitude of the management resulted in the reference for an adjudication. As such the action of the managements was illegal, vindictive; unjustified.The workman sought the relief for re-instatement in his post of Bill Clerk w.e.f., 7.9.1999 with all arrears wages and consequential benefits.

3. The Union in its rejoinder specifically denied all the allegations of the O.P./management, and stated that despite the charges unproved in the departmental enquiry, he was punished with punishment of demotion by the unauthorized person on the basis of perverse finding of the Enquiry Officer.

4. Whereas the contra pleaded case of the O.P./ Management with categorical denials is that Shri.Faudi Yadav was a Bill Clerk in the J.O.C.P. In course of surprise inspection by the General Manager, Block II Area in

presence of Manager L.P. Singh and the Project Officer S.N.Upadhya,it was detected the payment of Rs.8,680 to Smt.Adari Baurin as contrasted with her pay sheet Rs.2,772 shown as paid to her. The workman was issued the chargesheet No.JOCP/682/99 dt.8.6.1999 for the shortage of Rs.2,119 in cash as agreed by him on the spot. The shortage of money was deposited by him, while submitting its final account to the Senior Cashier. The workman also partially accepted the charge by refunding the shortage amount. On being dissatisfied with the reply of the workman, the departmental enquiry was fairly conducted in which he had participated, and was given full opportunities for his defence. On the proof of the charges levelled against him, he was punished with demotion as Clerk Gr.III on 7.9.1999 in view of the gravity of the charge. The action of the employer in demoting him so was justified. The workman was not entitled to any relief.

Further it is alleged that the BCCL is a Government Company as meant u/s 161 of the Company Act. It is entirely financed by the Central Government, so the employers of the Company are public servants u/s 21(2) of the I.P.C. The O.P./Management sought the permission /opportunity for proof of the charges afresh on merits if the enquiry held unfair at its preliminary issue.

5. In its parawise rejoinder, the O.P./Management has categorically denied the allegations of the workman, and stated that the workman has confessed his guilt as per his letters dt. 9.6.1999 and 11.6.1999.The enquiry was conducted as per the principles of natural justice. In view of misappropriation of public fund as committed by the workman, he ought to have been dismissed, but awarding his the demotion from Gr.II to Gr.III was a lenient aspect of the management.

FINDING WITH REASONS

6. In the instant reference when in lack of production of any witness for the management at preliminary point as to fairness of the domestic inquiry, the case of the management for its evidence at preliminary point was twice closed on 18.4.2011 as earlier by the Order No.16 dt.13.12.2005. In result, it directly came up for hearing on merit.

In course of it, only WWI Faudi Yadav, the workman himself for the Union concerned was examined.

The statement of WWI Faudi Yadav, the workman, transpires the indisputable fact that he had replied to the chargesheet; the domestic enquiry was held by Shri R. D. Sharma, Area Personnel Manager as the Enquiry Offier,before whom he had made his own statement that due to mistake the amount of Rs.2,190 was paid in excess, and the said amount was paid by him in the office of the colliery in the presence of the General Manager and the Agent of the Colliery; and for that mistake, he got his demotion from Gr.II to Gr.III.

7 After hearing the argument of Mr. D. Mukherjee, Ld. Advocate and Mr.D.K.Verma, Ld.Advocate for the O.P./ management and on consideration of the aforesaid facts, I find that the O.P./Management utterly failed to justify its action towards the workman. Man is not infalliable. Despite the acceptance of the mistake by the workman about excess payment to Smt.Adari Baurin and making up the shortage of Rs. 2,119 in the cash, for which the punishment of his demotion from Gr. II to Gr. III to the workman prima facie appears to be too harsh in the nature of his misconduct; this punishment extremely affecting his economic loss cumulatively for ever is liable to be set aside.Therefore,the workman needs a relief under the provision of Sec.11 A of the Industrial Dispute Act,1947.

In result, it is, in the terms of the reference, hereby:

ORDERED

The award and the same is passed that the action of the management of BCCL, Block 11 Area in demoting Shri Faudi Yadav from the post of Bill Clerk to the post of Clerk Gr.III w.e.f. 7.9.1999 on grounds of alleged misappropriation is quite unjust and improper. as well illegal. Therefore, the workman is entitled to the post of Bill Clerk Gr.II w.e.f., 7.9.1999 with differences in pay and all the consequential benefits till the date of his retirement on 31.01.2011.

The O.P./Management, Block 11 Area of BCCL, Nawagarh , Dhanbad is directed to implement the award within one month from the receipt of its notification following its publication by the Government of India in the Gazette of India, otherwise it shall be liable to pay with 8.9 interest over it in favour of the workman till its full realization.

Let the copies - one soft and one hard copies of the Award Employment government of India, New Delhi for publication and needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी बी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या

70/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था ।

[सं. एल-20012/510/1998-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 8-11-2013.

[No. L-20012/510/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.I), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 70 of 1999

Employers in relation to the management of Barora Area No.1 of M/s. B.C.C.L.

AND

Their workmen

Present :- Sri Ranjan Kumar Saran, Presiding officer

Appearances :

For the Employers- :- None

For the workman :- None

State:- Jharkhand Industry:- Coal

Dated·27-9-2013

AWARD

By Order No. L-20012/510/98-IR(C-I), dated 28-4-99, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

''Whether the action of the management of Barora Area No.1 of M/S BCCL, Dhanbad, not to regularize as a store clerk is genuine and justified? If not , to what relief the concerned Shri Subhas Yadav is entitled?''

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears subsequently, case remain pending, It is felt that the dispute between the parties have been resolved in the meantime. Hence "No Dispute" award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी बी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 69/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था ।

[सं. एल-20012/486/1999-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/1996) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 8-11-2013.

[No. L-20012/486/1999-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1)(d) of the l. D. Act., 1947.

REFERENCE NO. 69 OF 1996

Parties : Secretary, Dhanbad Colliery Karmchari Sangh, Dhanbad

Vs.

General Manager
Bhowra No.XI,of M/s BCCL,
Dhanbad.

APPEARANCES:

On behalf of the workman/Union : Mr. R. N. Ganguly, Ld. Advocate

On behalf of the Management : Mr. D. K.Verma , Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 16th July., 2013.

Dated, Dhanbad, the 16th July, 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012(486)/99-IR(C-l) dt. 12.7. 96.

SCHEDULE

"Whether the demand for the regularization of Sh.Sahdeo Kumar Mahato and 50 others (as per list enclosed) by the Union as Wagon Loaders by the management of Bhowra OCP of M/s. BCCL is justified? If so, to what reliefs are the workmen entitled and from which date?"

2. The case of sponsoring Union Dhanbad Colliery Karamchari Sangh, for workmen Sahdev Kr.Mahato and 50 others (as per list) is that the Union raised the Industrial Dispute as per its letter dt.4.4.1993 for 51 workmen as per Annexure for their regularization, as they were working as temporary wagon loader at Bhowra North Colliery.But later on the Union as per its letter dt.1.11.1993 requested the ALC(C) to include the left names of five another workmen (1) Sitaram Rewani, (2) Jagarnath Modi, (3)Alok Kr.Ganguly and (4) Mukendra Paswan (No fifth named). The Colliery had shortage of permanent wagon loaders. So the wagon loading had been regularly done by the workmen at the rate of Rs. 20 per day since 1980 which was paid by the management. All the workmen had put in 190/240 days attendance per year in 1981-91 but regularly worked in 1992 until their termination. The job of the wagon loading though prohibited under the Central Labour (R & A) Act, 1970 is permanent and perennial in nature in the colliery, where the wagon loading by the workmen was regularly under the supervision of the Mine Officials. But suddenly it was stopped by the management from 3.8.92 without any notice at their demand for regularization though the wagon loading is continued through contractor Surrender Pd.Singh and others by the management. When the management did not do anything on their frequent requests for it, the Union raised the Industrial Dispute before the ALC(C), Dhanbad.

3. Further alleged by the Union is that the workmen were also supplied the implements by the management for the job. There is a clear relationship of master and servant between the management and the workmen. The Labour Commissioner (C), Dhanbad was informed by the Labour Enforcement Officer (C), Jharia, as per letter dt. 5.8.94 that the workmen had been working as wagon loaders for the last 10-12 years ,and they were paid their wages by the Loading Babu as per the order of them management. It proves the directly employment of the workmen by the Management. Even then the management failed to regularize the workmen as per BCCL Circular No.BCCL/ DCPA/HQ/CC/89/23790-24090 dt.24/25.4.1989. At the delay by the Government of India after failure of conciliation report, the Hon 'ble High Court in CW JC No.2509/1995 (R) as per order dt,7 .12.95 had directed the Ministry for its reference in respect of 56 Nos. of the workmen within two months, even then present reference was made devoid of the aforesaid left names of 5 workmen's including one Gautam Kumar. As such ,the workmen are entitled to get regularization retrospectively with full wages.

4. The Union in its rejoinder has specifically denied all the allegations ,and stated that the industrial dispute comes under Sec.2(k) of the Industrial Dispute Act,1947.The service conditions of the workmen are governed by the Model/Certified Standing Orders and its any provision in consistent with the Constitution of India is illegal, unconstitutional and void. The appointment letter is not a since quo non under Sec.2(k) of the Mines Act,1952,as these workmen are/were persons employed in a mine under the said Act. The workmen were paid their wages Rs. 20 much below the wages of the wagon Loader, Group III as per the NCWA.The contractor's workmen are the workmen of the Principle Employer and the contractor was only a device to play fraud upon law.

5. Whereas with categorical denials, the contra pleaded case of the Opp./Management is that the present reference is legally unmaintainable as an industrial dispute; no employer- employee relationship existed between the management and the workmen at any time. The sponsoring Union has adopted the method of recruitment of job seekers through litigations. The workmen were never selected recruited or engaged by the management at any time as per the recruitment Rules of the Selection Committee for selection of required number of employees by following

the selection process as per the provision of the Constitution of India. No Officer has been empowered to recruit any workman without following the selection procedure. All the employments arbitrarily made by the any officer contrary to the rule stand null and void. The Company can only appoint any workman by issuing appointment letter stipulating condition of service. Such person after employment is issued the Identity Card, and a pay slip is monthly issued to him to receive his wages from the pay counter. The workmen do not possess any such things.

In the face of the prohibition as per the Notification U/s 10 of the Contract Labour (Regular & Appointment) Act, 1970 to engagement of contract labour on wagon loading, as well as in view of the strict principles of law applicable to the management, the engagement of any contractor by the management for the wagon loading or in the absence of the any contractor for such, alleged working of the workmen for wagon loading through an imaginary contrator are mere absurdities.

6. Since the Union had failed to produce any documents in support of the workmen's working as wagon loader, the Government Authorities considering its case to be false did not recommend for reference, intimating the management and the union about it as meritless. But at the direction of the Hon'ble High Court on the production of fabricated documents of the Union with a prayer to afford them an opportunity to prove their case, the Ministry referred it for an adjudication. The practice of the Union is malafide and undesirable.

7. The opp./Management in its rejoinder has stated that the claim of the Union is baseless; it has no scope for an amendment to the Schedule of the Reference to include new workmen in the reference. The workmen never worked as wagon loader at Railway Siding Nos. 4 & 5 of the Bhowra Colliery, as they were never employed so by the management. Therefore, the question of stopping/ terminating them from their duties without compliance of the law did not and cannot arise. Admitedly the wagon loading jobs are not being carried on by engaging any contract- labour nor the workmen could be engaged by the management or by the contractor for some wagon loading jobs. Moreover the question of payment to the workmen cannot arise, as they were never on the roll of the Company.

FINDING WITH REASONING

8. In the reference, WWI Sahadeo Kumar Mahato, one of the workmen,WW2 Darshin Bai,WW3, Ram Parikshit Singh, a Retd. Loading Munshi and WW4 Gopaljee, the Retd. L.E.O.(C), on behalf of the workmen /*union and MWI Rahul Kr. Mandal, the Asst. Manager (Pers.), Bhowra Colliery for the Opp./Management have been rerspectively examined.

The oral statement of WWI Sahadeo Kr. Mahato, the workman at Sl No. 1 of the list of the two pages, for all the workmen discloses that they with permanent wagon loaders continuously worked as wagon loaders on both sidings Nos. IV & V of Bhowra Colliery at the rate of Rs. 20 per day from 1980 until their stoppage from work in the year 1992, by completing more than 240 days of work in each calendar year under the instruction and supervision of the Loading Munshi. It also reveals that the management used to supply them the tools for loading coal on the wagons, but after stopping them from working so, the management engaged labour contractor Surender Singh for loading coal.

But the workmen witness (WWI) has admitted that neither they have any paper to show their appointment by the Loading Munshi and their working for 240 days on any siding nor they were issued any pay slip or I.D. Cards by the management.

WW2 Darshuin Bai as one of the permanent Wagon Loaders at both the siding of the Bhowra Colliery states about the workmen to have daily worked with the work of wagon loading at the said sidings during the year 1980, but in the year 1994, one Enforcement Officer had enquired of it, recording her statement with others. Her admission about the payment of wages implies that none of the workmen was issued any pay slip, and the loading Munshi used to keep all particulars of the workmen's service.

WW3 Ram Parikshit Singh an alleged retired Loading Munshi, claimed to have served from the year 1988 accordingly at both the sidings of the colliery where he saw the workmen working as wagon Loader since 1980 and 1988 which is self contradictory. According to him he used to look after their work. The WW3 failed to produce any paper about his status as permanent employee of the management. He has asserted no payment' of wages in any manner except through a Pay Slip issued by the management, and he never individually recorded the names or "Hajiri" of the workmen. His such statement disapproves that of WW2 Darshin Bao related to maintenance of any record by the Loading Munshi.

Lastly, the statement of WW4 Gopaljee, the Retd. L.E.O. (C) reveals that while posted at Area II, Jharia, he had investigated as per the A.L.C.(C), Dhanbad letter (dt.25.7.94 Ext.WI) with a list of photograph of the workmen at the siding spot. By recording statement of 18 permanent workmen and those of 58 workmen (Ext.2/l-2) he (WW4)

found their working with them for 10-12 years, and having got their wages from the clerk. But the witness (WW4) could not verify the photographs of the workmen nor could take their L.T.I./signatures. His statement about the status of the workmen is quite vague as wagon loading.

9. Whereas the statement of MWI Rahul Kr. Mandal the Asstt. Manager (Pers), Bhowra Colliery for 1980-92 clearly depicts that after going through the case record, none of the workmen Sahdeo Kr. Mahato & 50 others as per the list enclosed was on the roll of the Company nor any of them was given any job of wagon loaders at the then siding Nos. 4 & 5 of the Open Cast Project now no longer existence. It also indicates that the management had sufficient number of wagon Loaders at the relevant time, so the demand of the Union for their regularization is unjustified.

10. The argument advanced as per the written one on behalf of the workmen/union is that in excigency, the direct engagement of casual workers to man the position does not require the issuance of any appointment letter. It is also argued to draw adverse inference against the employees for non production of two documents (i) Wagon Dispatch Registers of both sidings Nos. 4 & 5 for the period from 1980 to 1992, though the MWI stated about the documents of Supplier Loader to have been filed which is apparently false, and the Attendance Register of permanent wagon Loaders as called for by the workmen in order to prove their case. But in lack of pleading about the specific attendance of the workmen as well as in view of the admission of the WW3 related non maintenance of the names and attendance of the workmen, no such adverse inference can be drawn against the employees, as what is non-existence cannot be made existent by calling for an imagined/presumed Register from the Employer; as such it is pleaded that the case of the workmen is undoubtedly alleged to have been proved, so they are entitled to their regularization.

Just contrary to the plea of Mr. D. K.Verma, the Ld. Counsel for the Opp./Management is that in the face of the admission of the workmen witnesses, and of WW4 Gopaljee, the L.E.O., whose admitted failure to properly verify the workmen's engagement on both sidings, the Union utterly failed to prove the workmen's cases, so the demand of the Union for regularization as wagon loader of the management is not justified.

On the perusal and consideration of the materials on the case record, and after hearing the argument of the Ld. Counsels for the respective parties, I find that the Union could not able to specifically establish its clear cut status of the 51 workmen (as per list enclosed) as wagons loaders for the disputed periods. In the situations of vagueness in the reference, there is apparently no relationship of employer-employee relation ever existent between the workmen and the Opp/Management for any point of time.

In the result, it is hereby awarded that the demand of the Union for regularization Sh. Sahdeo Kr. Mahato & 50 others (as per list enclosed) as Wagon Loaders of the Management of Bhowra OCP of M/s. BCCL is quite baseless, illegal and unjustified. So none of the workmen is entitled to any relief from any date.

Let copies, one Hard and one Soft, of the Award be sent to the Ministry of Labour & Employment, Government of India, New Delhi for information and its needful publication in the Gazettes of India.

KISHORI RAM, Presiding Officer

List of the workmen at siding No. 4

1. Sri Satrughan Lal B.P.
2 . Sri Ramesh Dhobi
3. Sri Chatmoti B.P.
4. Sri Niwas Mullick
5. Sri Manilal Manj
6. Sri Manoj Kr. Mullick
7. Sri Lagan Bauri
8. Sri Nepal Mahato
9. Smt Majhiyan
10. Sri Santan Manjhi
11. Sri Satnam Murmu
12. Sri Dilboy
13. Sri Rambhilas Bhuiya
14. Sri Anandram Satnami
15. Sri Kishori Paswan
16. Sri Ghoriba Paswan
17. Sri Jaynath Mahato
18. Sri Tarasram, Kurmi
19. Smt.Urmila Devi
20. Sri Ramsuman Chauuan
21. Sri Satinarayan Mahato
22. Sri Sujit Kr. Mahato
23. Sri Ramkumar B.P.
24. Sri Rohit Ram Kurmi
25. Sri Budu Manjhi

26. Sri Dara Satnami

27. Sri Kalaram Satnami

28. Smt. Sanatra Bhai

29. Sri Raghu Manjhi

30. Sri Timir Rakshit

List of the workmen at siding No. 5

31. Sri Sahdeo Kr. Mahato

32. Sri Ramsneh Dhobi

33. Sri Naresh Dhobi

34. Sri Kanta Pd. Dhobhi

35. Sri Satrughan Sahu

36. Sri Debram Kumri

37. Sri Shankar Das

38. Sri Ramlal Satnami

39. Sri Golak Manji

40. Sri Nokot Manjhi

41. Sri Govind Manjhi

42. Sri Godhar Mahato

43. Sri Radan Mahato

44. Sri Pado Rajak

45. Sri Bishnu Pd. Sahu

46. Sri Sahdeo Mahato (Chota)

47. Sri Basuri Paswan

48. Sri Mantulal Mahato

49. Sri Chotalal Mahato

50. Sri Praladh Mullick

51. Sri Baliram Mullick

नई दिल्ली, 8 नवम्बर, 2013

का.आ. 2403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 26/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-11-2013 को प्राप्त हुआ था ।

[सं. एल-20012/62/1995-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2013

S.O. 2403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/1996) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 8-11-2013.

[No. L-20012/62/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I. D. Act, 1947.

REFERENCE NO. 26 OF 1996

Parties : Secretary,
Bihar Colliery Kamgar Union, Hirapur, Dhanbad
Vs. General Manager, Moonidih Area of
BCCL, Moonidih, Dhanbad

APPEARANCES:

On behalf of the workman/Union : Mr. K. Chakraborty, Ld. Advocate

On behalf of the Management : Mr. D. K.Verma , Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 19th Sept., 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/62/95-I.R.(Coal-I) dt. 4.3.1996.

SCHEDULE

"Whether the demand of the Union for placement of S/Shri Sachidanand Singh Rajender Pandit and Sheo Shankar Singh, Fitter-cum-Welders in Cat.VI from 1982 and in Technical and Supervisory, Grade 'C' from 1985 is justified? If so, to what reliefs are the concerned workmen entitled?"

2. Neither Mr. K. Chakraborty, the Ld.Advocate nor the Union representative for Bihar Colliery Kamgar Union,

Dhanbad, nor any of three workmen Sachidanand Singh, Rajender Pandit and Sheo Shankar Singh appeared. But Mr.D.K.Verma, the Ld. Advocate for the O.P./Management is present without any witness on behalf of the O.P./ management.

Perusal of the case record reveals that the evidence of the workmen was already closed as per the Order No.53 dt. 4-1-2006 of the Tribunal. The present reference refers to an issue regarding the demand of the Union for the placement of the workmen Fitter-cum-Welder in Cat.VI from 1982 and in Technical and Supervisory Gr. C from 1985. lf the Union/workmen fail to discharge the onus of their proof by any evidence, it resulted in the closure of his case earlier in the year 2006.This is the oldest case. Under these circumstances, proceeding with the case for the evidence of the O.P./Management as usually coming since then is not only unwarranted but also against the principle of rule of the law. In result, the case is closed as no Industrial Dispute existent and accordingly an order is passed.

KISHORI RAM, Presiding Officer

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.